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*Counsel to the Circuit City Stores, Inc. Liquidating Trust*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	x
CIRCUIT CITY STORES, INC., <u>et al.</u> ,	Case No. 08-35653-KRH
Debtors.	Chapter 11
	[NO HEARING REQUESTED]
	x

**STIPULATION BY AND BETWEEN CIRCUIT CITY STORES, INC. LIQUIDATING TRUST AND CHASE BANK USA, N.A. PERMITTING THE FILING OF AN AMENDMENT TO PROOF OF CLAIM NUMBER 7065; AND ORDER THEREON**

This Stipulation By and Between Circuit City Stores, Inc. Liquidating Trust and Chase Bank USA, N.A. Permitting the Filing of an Amendment to Proof of Claim Number 7065 (the “Stipulation”) is entered into by and between Circuit City Stores, Inc. Liquidating Trust (the “Trust”), on the one hand, and Chase Bank USA, N.A. (“Chase Bank,” and together with the Trust, the “Parties”), on the other hand, with respect to the following recitals of fact:

A. On or about January 28, 2009, Chase Bank filed herein that certain proof of claim designated by the claims agent as claim number 7065 (the “Original Claim”).

B. The Debtors objected to the Original Claim, among others, pursuant to their Thirty First Omnibus Objection to Claims [Dkt. No. 4585]. Chase responded to the objections [Dkt. No. 4899] and the contested matter has since been continued from time to time.

C. On or about September 14, 2012, this Court entered that certain Order Automatically Expunging Claims [Dkt. No. 12402] (the “Claims Order”), directing the claims agent to strike and expunge all Excessively Delinquent Claims (i.e., claims filed with the Court on or after January 1, 2012) unless otherwise directed by further order of the Court and/or written instruction from the Trust.<sup>1</sup>

D. Chase Bank wishes to amend the Original Claim by filing that certain Amended Proof of Claim (the “Amended Claim”), a true and correct copy of which is attached hereto as Exhibit “A.”

E. The Trust and Chase Bank hereby stipulate and agree that, notwithstanding the Claims Order, Chase Bank be permitted to file the Amended Claim, on the conditions more fully set forth herein.

WHEREFORE, THE PARTIES AGREE AND STIPULATE AS FOLLOWS:

1. The Parties hereby request that the Court enter an Order Granting Stipulation By and Between Circuit City Stores, Inc. Liquidating Trust and Chase Bank USA, N.A. Permitting the Filing of an Amendment to Proof of Claim Number 7065, submitted herewith as Exhibit “B” (the “Order”), permitting the filing and docketing of the Amended Claim.

2. The Trust reserves all of its rights, remedies and defenses with respect to its objections to the Original Claim and the Amended Claim, both procedural and substantive, including, without limitation, that the Amended Claim and the assertions therein are not timely asserted.

3. In the event that Chase Bank is required to provide additional documentation in support of either the Original Claim or the Amended Claim, Chase Bank is authorized to provide such additional documentation or information without the need to further amend its claim or obtain approval from the Court.

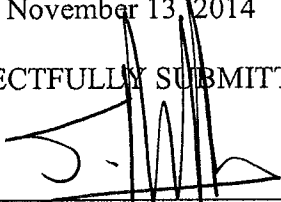
*[remainder of page left intentionally blank]*

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Claims Order.

Dated: Los Angeles, California  
November 13, 2014

RESPECTFULLY SUBMITTED:



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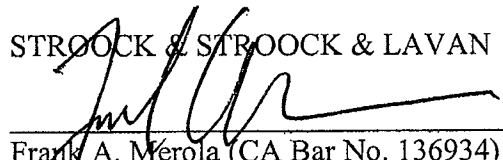
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*Counsel for the Circuit City, Inc. Liquidating Trust*

STROOCK & STROOCK & LAVAN



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-and-

KUTAK ROCK LLP  
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Facsimile: (804) 783 6192

*Attorneys for Chase Bank USA, N.A.*



Filed This 17<sup>th</sup> Day of  
November, 2014

BY: TAVENNER & BERAN, PLC

/s/ Paula S. Beran

Lynn L. Tavenner (VA Bar No. 30083)  
Paula S. Beran (VA Bar No. 34679)  
20 North Eighth Street, 2<sup>nd</sup> Floor  
Richmond, Virginia 23219  
(804) 783-8300

*Co-Counsel for the Liquidating Trustee*

**EXHIBIT A**  
**(Amended Claim)**

B 10 (Official Form 10) (04/13)

<b>UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF VIRGINIA</b>		<b>AMENDED PROOF OF CLAIM</b>
Name of Debtor: Circuit City Stores, Inc.	Case Number: 08-35653	<b>COURT USE ONLY</b>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Chase Bank USA, N.A.		<input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim.
Name and address where notices should be sent: Frank A. Merola, Esq. Stephen J. Newman, Esq. Stroock & Stroock & Lavan LLP 2029 Century Park East 16th Floor Los Angeles, CA 90067  Telephone number: 310-556-5800 email: fmerola@stroock.com snewman@stroock.com		Court Claim Number: <u>7065</u> (If known)  Filed on: <u>1/28/2009</u>
Name and address where payment should be sent (if different from above):   Telephone number: email:		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: <u>\$7,152,232.29</u>  If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: (See instruction #2) <u>See Attached Rider</u>		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____  Value of Property: _____  Annual Interest Rate: _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time the case was filed, included in secured claim, if any: _____  Basis for perfection: _____  Amount of Secured Claim: _____  Amount Unsecured: _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(5).
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(____).
		Amount entitled to priority: _____

\*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

B 10 (Official Form 10) (04/13)

6. **Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. **Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. **Signature:** (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief

Print Name: Stephen Newman  
Title: Partner  
Company: Stroock & Stroock & Lavan LLP

Stephen Newman November 10, 2014  
(Signature) (Date)

Address and telephone number (if different from notice address above):

Telephone number: email:

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



to United States District Court for the Central District of California (the “District Court”), Case No. CV06-4804 DDP (PJWx) (herein the “Underlying Complaint” or the “Underlying Case”).

4. As provided in the Initial Proof of Claim, the Underlying Complaint centered on Circuit City and its advertising to its customers. The specific advertising challenged in the Underlying Complaint was produced by Circuit City and not by Chase. Both the Underlying Complaint and the District Court stated that Circuit City’s advertising was at the core of the litigation – the issue being whether Circuit City’s advertising was misleading and deceptive.

5. On April 23, 2014, the plaintiff in the Underlying Case filed a motion for the preliminary approval of the Stipulation and Agreement of Settlement (the “Settlement Agreement”). The Settlement Agreement was attached as Exhibit 1 to the Declaration of Drew E. Pomerance in Support of Plaintiffs’ Motion for Preliminary Approval of Settlement. A copy of the motion and declaration are attached hereto as Exhibits A and B, respectively. The District Court granted the preliminary approval of the Settlement Agreement on June 5, 2014. A copy of the preliminary approval order is attached hereto as Exhibit C. On October 27, 2014, the District Court granted the final approval of the Settlement Agreement. A copy of the Judgment and Amended Final Approval Order are attached hereto as Exhibits D and E, respectively.

6. Pursuant to the terms of the Settlement, Chase will pay a total of \$5,500,000 (the “Settlement Amount”) in settlement of the claims in the Underlying Case. Additionally, Chase has incurred a total of \$36,688.92 in costs associated with defending the Underling Case and \$1,615,543.37 in legal fees. A copy of the Service and Expense Remittance Summary is attached as Exhibit F.<sup>1</sup>

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<sup>1</sup> Copies of the time entries associated with the applicable invoices are available upon written request.

7. Circuit City is required to indemnify Chase under, *inter alia*, Article X of a certain Consumer Credit Card Program Agreement by and between Circuit City Stores, Inc. and Bank One, Delaware, N.A. dated as of January 16, 2004.

8. Accordingly, Chase has valid claims for defense and indemnity against Circuit City for the Settlement Amount and the costs of defending the Underlying Case. Moreover, Circuit City has acknowledged Chase's indemnity claim, as reflected on Debtors' Schedule F filed on docket entry number 1130, page 149 of this bankruptcy.

9. To the extent any portion of this claim arises subsequent to the commencement of the Bankruptcy Case, such portion is entitled to administrative expense priority pursuant to 11 U.S.C. § 507(a)(1). Chase asserts that those amounts are entitled to administrative priority.

10. To the extent this claim is neither secured nor entitled to priority status, Chase reserves and asserts a general unsecured claim in that amount.

11. Additional information will be furnished by Chase upon reasonable request.

#### **RESERVATION OF RIGHTS**

12. No judgment has been entered against the Debtors on any of the claims asserted herein and no payment has been made on behalf of the claim subsequent to the Petition Date.

13. This claim is not subject to any offsets or counterclaim.

14. Chase reserves all rights to amend, modify or supplement this Amended Proof of Claim in any respect, including, without limitation to include additional claims for reimbursement, set-off, damages, interest and/or costs and expenses, as appropriate. The filing of this Amended Proof of Claim shall not be deemed a waiver of any claim in law or in equity that Chase may have against the Debtors, its affiliates, or any other persons or entities.

15. The filing of this claim is specifically made without any election of rights and remedies, and Chase hereby reserves all rights and remedies which it may have, in addition to the filing of and pursuit of this Amended Proof of Claim, against any other person or entity.

16. The execution and filing of this Amended Proof of Claim is not a waiver of any of Chase's rights against any person, entity or property including, without limitation, the right to move to withdraw the reference with respect to the subject matter of this claim or otherwise a waiver or release of Chase's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court Judge, and any right to trial by jury that Chase may have in any civil proceeding arising in or related to this case, nor is it a consent to jurisdiction of this or any court except with respect to the allowance of the claims asserted herein.

#### **NOTICES**

17. All notices concerning this Amended Proof of Claim should be sent to the following party at the addresses set forth below:

Stroock & Stroock & Lavan LLP  
Frank A. Merola, Esq.  
Stephen J. Newman, Esq.  
2029 Century Park East 16th Floor  
Los Angeles, CA 90067



**EXHIBIT A**

**Motion for Preliminary Approval of Settlement**

1 Drew E. Pomerance, Esq. (SBN. 101239), dep@rpnalaw.com  
2 Burton E. Falk, Esq. (SBN. 100644), bef@rpnalaw.com  
3 David R. Ginsburg, Esq. (SBN. 210900), drg@rpnalaw.com  
4 **ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP**  
5 5820 Canoga Avenue, Suite 250  
6 Woodland Hills, California 91367  
7 Telephone: (818) 992-9999  
8 Facsimile: (818) 992-9991

9 [Additional Counsel Continued On Next Page]

10 Attorneys for Plaintiffs GARY DAVIS and  
11 GENE CASTILLO, individually,  
12 as Private Attorney Generals, and on behalf  
13 of all others similarly situated

14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 GARY DAVIS, an individual; on  
17 behalf of himself, and as PRIVATE  
18 ATTORNEY GENERAL, and on  
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 CHASE BANK U.S.A., N.A., a  
23 Delaware corporation; and DOES 1  
24 through 50, inclusive,

25 Defendants.

Case No. CV 06 4804 DDP (PJWx)

Honorable Dean D. Pregerson

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT THEREOF**

**[Declaration of Drew E. Pomerance  
and Attached Exhibits Filed  
Concurrently; [Proposed] Order  
Lodged Concurrently]**

**Date: June 2, 2014**

**Time: 10:00 a.m.**

**Courtroom: 3**

1 Jeff Westerman, Esq. (SBN. 94559)  
2 jwesterman@jswlegal.com  
3 Jordanna G. Thigpen, Esq. (SBN. 232642)  
4 jthigpen@jswlegal.com  
5 **WESTERMAN LAW CORP.**  
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15 Los Angeles, California 90071  
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17 Facsimile: (213) 617-1975

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Attorneys for Plaintiffs GARY DAVIS and  
GENE CASTILLO, individually,  
as Private Attorney Generals, and on behalf  
of all others similarly situated

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1 PLEASE TAKE NOTICE that on June 2, 2014 at 10:00 a.m., or as soon  
2 thereafter as the matter may be heard before the Honorable Dean D. Pregerson in  
3 Courtroom 3 of the above-entitled court, located at 312 North Spring Street, Los  
4 Angeles, California, Plaintiffs Gary Davis and Gene Castillo will move this Court  
5 for an order (1) granting preliminary approval of the settlement in this case, (2)  
6 provisionally certifying the class for settlement purposes, (3) approving the form  
7 and manner of notice to be provided to the proposed settlement class and directing  
8 that notice be given to the proposed settlement class, (4) appointing Plaintiffs as  
9 class representatives of the proposed settlement class, (5) confirming the  
10 appointment of Roxborough, Pomerance, Nye & Adreani LLP, Westerman Law  
11 Corp., and Milberg, LLP, as co-counsel for the proposed settlement class, and (6)  
12 scheduling a hearing for final approval of the proposed settlement.

13 Defendant Chase Bank U.S.A., N.A. (Chase) does not oppose this motion,  
14 which is being made following conferences between counsel over the last few  
15 months, pursuant to L.R. 7-3.

16 This motion is based on this notice and motion, the accompanying  
17 memorandum of points and authorities, the declaration of Drew E. Pomerance and  
18 documents attached thereto, all the matters of record filed with the Court, and such  
19 other evidence and argument as may be submitted to the Court.  
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1 DATED: April 23, 2014

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

2 By: s/ Drew E. Pomerance

3 DREW E. POMERANCE

4 BURTON E. FALK

5 Attorneys for Plaintiffs GARY DAVIS and

6 GENE CASTILLO, individually,

as Private Attorney Generals, and on behalf

7 of all others similarly situated

8 DATED: April 23, 2014

WESTERMAN LAW CORP.

9 By: s/ Jeff Westerman

10 JEFF WESTERMAN

11 JORDANNA G. THIGPEN

12 Attorneys for Plaintiffs GARY DAVIS and

13 GENE CASTILLO, individually,

14 as Private Attorney Generals, and on behalf

of all others similarly situated

15 DATED: April 23, 2014

MILBERG LLP

16 By: s/ Nicole Duckett Fricke

17 NICOLE DUCKETT FRICKE

18 Attorneys for Plaintiffs GARY DAVIS and

19 GENE CASTILLO, individually,

20 as Private Attorney Generals, and on behalf

21 of all others similarly situated

1 **I. INTRODUCTION**

2 The parties have reached an agreement to settle this matter on the terms set  
3 forth in the Settlement Agreement (Agreement) attached as Exhibit 1 to the  
4 concurrently filed Declaration of Drew E. Pomerance. The terms of the settlement  
5 more than meet the requirements for preliminary approval. Chase has agreed to  
6 pay \$5.5 million in cash benefits to resolve this matter.

7 The Class alleged that Chase misled consumers and failed to properly apply  
8 its customers' payments first to regular balance purchases before promotional  
9 purchases. The result was that class members were wrongly assessed finance  
10 charges on those purchases.

11 This settlement pays real cash benefits back to class members and  
12 compensates them for some of the finance charges that Chase assessed against  
13 them. The settlement is the result of extensive negotiations that continued on and  
14 off for the past four years, substantial discovery, investigation, and analysis to  
15 verify the size and extent of the Class, the potential damages they incurred, as well  
16 as a thorough analysis of Plaintiffs' legal theories and Chase's defenses – both on  
17 the merits as well as having to do with class certification issues. As well, the  
18 parties twice mediated the dispute before the Honorable Edward Infante, Ret.,  
19 who helped broker the terms of this Agreement.

20 Accordingly, the parties request that this Court preliminary approve this  
21 settlement as fair, reasonable and in the best interest of the Class, and that the  
22 Court further order that notice be sent to the class members in a manner that  
23 comports with basic notions of due process, and finally that the Court order a final  
24 fairness hearing to be scheduled as set forth below.

25 ///

26 ///

27 ///

28 ///

1 **II. BACKGROUND OF THE CASE**

2 **A. The Allegations**

3 Plaintiff Gary Davis filed this putative class action complaint on June 26,  
4 2006, alleging that Chase misled and deceived consumers in the manner in which  
5 it applied credit card payments to promotional purchases made at Circuit City.  
6 Mr. Davis alleged causes of action for violation of the Consumers Legal  
7 Remedies Act, violation of Business & Professions Code §17200, violation of  
8 Business & Professions Code §17500, fraud and deceit, breach of contract, breach  
9 of the implied covenant of good faith and fair dealing, and unjust enrichment. On  
10 behalf of the Class, Mr. Davis sought restitution and compensatory damages.

11 The basis of the lawsuit is Plaintiffs' allegation that Chase engaged in a  
12 deceptive and unfair business practice of misrepresenting a promotional purchase  
13 program and then misallocating payments made by customers participating in the  
14 program. Plaintiffs alleged that this resulted in customers not only failing to  
15 receive the benefit of Chase's promotional offer, but also being wrongly assessed  
16 finance and interest charges in violation of Chase's cardmember agreement.

17 Plaintiffs alleged Chase marketed promotional rewards card purchases at  
18 Circuit City as "interest free" (or some variant thereof) but charged California  
19 credit cardholders interest and fees for those purchases. (First Amended  
20 Complaint (FAC), ¶ 1, Docket No. 91.) Plaintiffs asserted that Chase improperly  
21 applied credit card payments to the "interest free" promotional balances that were  
22 not due before applying them to interest-bearing, non-promotional balances,  
23 causing consumers to incur interest and fees they otherwise would not have and in  
24 direct contradiction to Chase's advertising and its cardmember agreement. (Id. at  
25 ¶¶ 1, 20-25.)

26 For example, and with respect to Plaintiff Gary Davis, on March 3, 2006, he  
27 purchased a \$2,000 television from Circuit City under a promotional offer in  
28 which no interest or payments were due until January 2008. (Id. at ¶ 25.) Mr.

1 Davis then submitted a payment of \$1,736.91 to cover his preexisting February  
2 balance. Instead of allocating Mr. Davis' payment to his pre-existing balance,  
3 Chase applied the entire payment toward the just-purchased television, despite the  
4 promotional interest and payment-free grace period. Because Mr. Davis' entire  
5 payment was allocated to the promotional purchase, there were insufficient funds  
6 to cover Mr. Davis' preexisting February statement balance. Accordingly, Chase  
7 assessed a finance charge of \$77.25. (Id. at ¶¶ 22-25.) Plaintiffs alleged that  
8 payments made to Chase should have been allocated to the interest-bearing  
9 portion of balances first rather than to the deferred-interest/deferred-payment  
10 promotional purchases. (Id. at ¶¶ 28-29, 53.)

11 **B. Procedural History**

12 After the June 2006 filing of the case in state court, Defendants removed  
13 the action to this Court in August 2006. (Docket No. 1.) After addressing  
14 removal and remand issues, the case was stayed for approximately 21 months due  
15 to an appeal of the Court's determination that Chase's arbitration clause and class  
16 action waiver provisions in its cardmember agreements were unenforceable under  
17 California law. This Court's determination was eventually affirmed by the Ninth  
18 Circuit. (Docket No. 80.) Around that time, the claims against Circuit City were  
19 withdrawn due to its bankruptcy. (Docket No's. 79, 91.)

20 On March 17, 2009, Plaintiffs filed their FAC. (Docket No. 91.) On  
21 September 3, 2009, the Court dismissed Plaintiffs' Unfair Competition Law claim  
22 to the extent it challenged the allocation of payments apart from the way that  
23 allocation intersects with deceptive advertising. (Docket No. 112.) The Court  
24 subsequently dismissed Plaintiffs' Consumers Legal Remedies Act claim, and  
25 determined that Chase is not liable for any claims related to conduct prior to  
26 Chase's May 25, 2004 acquisition of the credit card assets at issue in the case.  
27 (Docket No's. 167, 203.) On January 16, 2013, the Court granted summary  
28 judgment on the breach of the implied covenant of good faith and fair dealing

1 claim. (Docket No. 291.) Accordingly, the two claims that remain are breach of  
2 contract and a limited claim for violation of the Unfair Competition Law.

3 The Court also denied Plaintiffs' Motion for Class Certification on January  
4 16, 2013. (Docket No. 291.) The denial was based on the Court's finding that the  
5 "factual circumstances surrounding [Plaintiff Gary Davis'] purchases are so  
6 atypical as to fall below the normally permissive standard of Rule 23(a)'s  
7 typicality requirement." The Court found that "questions regarding [Plaintiff  
8 Gary Davis'] individual circumstances are likely to predominate over factual  
9 questions common to the class." (Docket No. 291.)

10 Gene Castillo subsequently moved for an order granting leave to file a  
11 complaint in intervention. Plaintiff Gary Davis moved simultaneously, and in the  
12 alternative, for leave to file a second amended complaint adding Gene Castillo as  
13 a party Plaintiff. (Docket No. 293.) Chase moved to dismiss the entire case as  
14 moot. (Docket No. 296.) These motions are all currently set to be heard on  
15 October 27, 2014. (Docket No. 329.)

16 **C. Mediation and Settlement**

17 The parties initially participated in private mediation on June 18, 2009.  
18 (Declaration of Drew E. Pomerance (Pomerance Decl.), ¶ 2.) A second mediation  
19 with a different neutral, the Honorable Edward Infante, Ret., took place on  
20 November 16, 2011. The parties remained unable to resolve the litigation.  
21 (Pomerance Decl., ¶ 3.)

22 Following the Court's denial of Plaintiff's Motion for Class Certification,  
23 the parties participated in a third mediation on October 22, 2013. This mediation  
24 was again held with Judge Infante. (Pomerance Decl., ¶ 4.) Drew E. Pomerance  
25 of Roxborough, Pomerance, Nye & Adreani, LLP and Jeff Westerman of  
26 Westerman Law Corp., attended on behalf of the Class, while Chase was  
27 represented by its attorneys, Julia Strickland and Stephen Newman of Stroock &  
28 Stroock & Lavan, LLP. Also attending the mediation on behalf of Chase were

1 several of its authorized representatives. (Pomerance Decl., ¶ 5.) The mediation  
2 session lasted all day, and resulted in a tentative agreement which was subject to  
3 confirmatory discovery whereby Chase would have to verify under oath the size  
4 of the Class, the amount of finance charges that Plaintiffs contend were  
5 improperly charged and collected by Chase, and the period of time in which the  
6 promotional purchases were made. (Pomerance Decl., ¶ 6.)

7 Chase produced a detailed declaration under penalty of perjury from  
8 Suzanne Morgan, a Risk Director in Chase's Risk Department who has worked  
9 for Chase or its predecessor Bank One since 1997. Ms. Morgan is familiar with  
10 and oversaw the compilation of data that produced information necessary for  
11 Class Counsel to evaluate the reasonableness of the settlement. (Pomerance Decl.,  
12 ¶ 7.) After carefully evaluating Ms. Morgan's declaration, Class Counsel  
13 determined that the existing deal adequately compensates the Class. (Pomerance  
14 Decl., ¶ 8.) The parties have now formalized and finalized a settlement  
15 agreement.

16 The settlement agreement calls for Chase to establish a settlement fund  
17 totaling \$5.5 million. (Pomerance Decl., ¶ 9.) Class Counsel are now confident  
18 that they have properly evaluated the risks of further prosecuting this class action  
19 as compared to the benefits of the current settlement proposal, and as well have  
20 appropriately evaluated the reasonableness of the benefits that will be going to the  
21 Class. (Pomerance Decl., ¶ 10.)

22 Given the substantial delays resulting from further prosecution of this  
23 lawsuit, Chase's pending motion for dismissal, the Court's denial of the Motion  
24 for Class Certification, and the serious and fundamental question of whether the  
25 Class would ever prevail on the merits, Class Counsel is confident that this  
26 settlement entered into at this time, and on these terms, is more than fair and  
27 reasonable, and should be preliminarily approved by this Court. (Pomerance  
28 Decl., ¶ 11.)

1 **III. THE SETTLEMENT**

2 The settlement reached by the parties provides real and tangible benefits to  
3 the Class, and as such, more than meets the standards required to be deemed fair  
4 and reasonable. This is an all cash settlement, and does not involve the provision  
5 of coupons whatsoever. If approved, the key terms of the settlement are as  
6 follows:

- 7 (a) Chase will contribute \$5.5 million for the benefit of the settlement  
8 class (Exhibit (Exh.) 1, Settlement Agreement, §4.1.);
- 9 (b) All class members for whom the settlement administrator is able to  
10 determine a valid address shall receive a direct payment. (Exh. 1,  
11 §§ 4.4-4.6.) These class members need not make a claim or do  
12 anything in order to receive payment. Based on confirmatory  
13 discovery, there are approximately 437,918 class members who are  
14 eligible to receive direct payments. (Pomerance Decl., ¶ 13.) The  
15 discovery has also disclosed that this group incurred an average  
16 finance charge of approximately \$40.33. (Pomerance Decl., ¶ 14.)  
17 The direct payments to class members should be approximately \$10  
18 each. (Pomerance Decl., ¶ 15.) Thus, this group is receiving back  
19 approximately 25% of what they allege to be their damages  
20 (Pomerance Decl., ¶ 16.);
- 21 (c) Chase has agreed, subject to this Court's approval, to pay service  
22 awards to class representatives Gary Davis and Gene Castillo in  
23 amounts not to exceed \$5,000 each, to compensate them for their  
24 time and effort in prosecuting this case (Exh. 1, §5.1.);
- 25 (d) Chase has also agreed, subject to court approval, not to oppose Class  
26 Counsel's fee request up to \$1.5 million – *which represents 27% of*  
27 *the \$5.5 million common fund.* (Exh. 1, §5.1.) A fee of 25% is the  
28 benchmark in the Ninth Circuit, and the attorneys' fees were



1 negotiated separately from and after the parties reached their  
2 agreement on the benefits going to the Class (Pomerance Decl., ¶  
3 17.);

- 4 (e) Costs of notice and administration are to be paid by the Class, to be  
5 deducted from the settlement fund. (Exh. 1, §§4.2, 4.4).

6 **IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY**  
7 **APPROVAL**

8 As a matter of public policy, settlement is a strongly favored method for  
9 resolving disputes. *See Util. Reform Project v. Bonneville Power Admin.*, 869  
10 F.2d 437, 443 (9th Cir. 1989). This is especially true in complex class actions  
11 such as this one. *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625  
12 (9th Cir. 1982).

13 **A. Standards for Preliminary Approval**

14 Federal Rule of Civil Procedure 23(e) requires judicial approval for the  
15 compromise of claims brought on a class basis. At the final approval hearing, the  
16 Court will have before it extensive papers submitted in support of the proposed  
17 settlement. The Court will be asked to make a determination whether the  
18 settlement is fair, reasonable and adequate under the circumstances. At this  
19 juncture, however, Plaintiffs request only that the Court grant preliminary  
20 approval of the settlement.

21 In determining whether preliminary approval is warranted, the sole issue  
22 before the Court is whether the proposed settlement is within the range of what  
23 might be found fair, reasonable, and adequate, so that notice of the proposed  
24 settlement should be given to Class members and a hearing scheduled to consider  
25 final settlement approval. *See Manual for Complex Litigation* §13.14, at 173 (4th  
26 ed. 2004) ("First, the [court] reviews the proposal preliminarily to determine  
27 whether it is sufficient to warrant public notice and a hearing. If so, the final  
28 decision on approval is made after the hearing.")

1 To grant preliminary approval, the Court need only conclude settlement of  
2 the claims against Defendant on the agreed-upon terms is within the range of  
3 possible approval for the purposes of providing notice and holding a future  
4 fairness hearing.

5 **B. The Proposed Settlement Merits Preliminary Approval**

6 The factors that courts consider in granting final approval of class action  
7 settlements lend support to the settling parties' belief that the proposed settlement  
8 is within the range of possible approval. In *Officers for Justice*, the Ninth Circuit  
9 set forth the factors the trial court should consider in assessing whether a proposed  
10 settlement is fair, reasonable, and adequate.

11 Although Rule 23(e) is silent respecting the standard by which  
12 a proposed settlement is to be evaluated, the universally  
13 applied standard is whether the settlement is fundamentally  
14 fair, adequate, and reasonable. The district court's ultimate  
15 determination will necessarily involve a balancing of several  
16 factors which may include, among others, some or all of the  
17 following: the strength of plaintiffs' case; the risk, expense,  
18 complexity, and likely duration of further litigation; the risk of  
19 maintaining class action status throughout the trial, the amount  
20 offered in settlement; the extent of discovery completed, and  
21 the stage of the proceedings; the experience and views of  
22 counsel; the presence of a governmental participant; and the  
23 reaction of the class members to the proposed settlement.

24 *Id.* at 625 (citations omitted). *Accord* *Torrisi v. Tucson Elec. Power Co.*, 8  
25 F.3d 1370, 1375 (9th Cir. 1993); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026  
26 (9th Cir. 1998).

27 ///

28 ///

1                   **1. Plaintiffs Have Engaged In Sufficient Discovery and**  
2                   **Investigation to Properly Evaluate the Propriety of**  
3                   **Settlement**

4           As a result of extensive negotiations and discovery, counsel have been able  
5 to fairly and properly evaluate the risks of litigation and the propriety of this  
6 settlement. In addition to formal discovery over the course of several years, Class  
7 Counsel also conducted a thorough investigation and analysis of data that was  
8 voluntarily supplied under oath by Chase's authorized representative. The  
9 information Class Counsel received from Chase through both formal and informal  
10 discovery was detailed, thorough, and directly responsive to Class Counsel's  
11 inquiries. (Pomerance Decl., ¶¶ 18-20.)

12           After analyzing the discovery, Class Counsel persisted in asking follow up  
13 questions which Chase answered. In addition to carefully studying the  
14 information obtained through formal and informal confirmatory discovery, Class  
15 Counsel have also carefully evaluated the legal issues, including the Court's  
16 denial of the Motion for Class Certification, the potential that the Court may grant  
17 Chase's motion to dismiss, and the likelihood of prevailing on the merits.  
18 (Pomerance Decl., ¶ 21.)

19           Class Counsel therefore believes that they have sufficiently analyzed both  
20 the liability and damages information necessary to properly evaluate the propriety  
21 of the settlement. Based on this analysis, and the current status of the case, Class  
22 Counsel have determined that a settlement of \$5.5 million is in the best interest of  
23 the Class. (Pomerance Decl., ¶ 22.)

24                   **2. The Strength of Plaintiffs' Case, When Balanced Against**  
25                   **the Risk, Expense and Duration of Further Litigation,**  
26                   **Supports Approval of This Settlement**

27           This settlement is well within the range of possible approval. The Court  
28 has denied the Motion for Class Certification. In most cases that would be it.

1 Any potential settlement on behalf of a class would be highly improbable.  
2 Despite this, efforts were made to bring in another class representative. While  
3 these efforts were underway, Chase moved to dismiss the case on the grounds that  
4 the case is now moot. Accordingly, it is entirely possible that the Court may grant  
5 Chase's motion to dismiss. In that event, the class would get nothing.

6 In addition, even if the Court were to deny Chase's motion to dismiss,  
7 several obstacles remain to the Class prevailing on the merits at trial. A  
8 substantial risk will remain that the Class will be unable to obtain certification.  
9 For example, Chase has argued and will undoubtedly continue to argue that the  
10 circumstances surrounding each particular transaction, including the possible  
11 violation of the terms of the cardmember agreement by cardholders, will result in  
12 individualized issues.

13 Finally, even if the Class was able to achieve certification, it is far from  
14 certain whether the Class would prevail on the merits. Chase has vigorously  
15 disputed Plaintiffs' claims on the merits. Chase contends that its cardmember  
16 agreement and other materials expressly allowed it to allocate payments to lower-  
17 interest balances before higher-interest balances. And, just getting to a trial on the  
18 merits could take up to several years more, on top of the eight years that the case  
19 has thus far proceeded. The proposed settlement eliminates the risks associated  
20 with continuing litigation, including possible outright dismissal, as well as the  
21 substantial risk of no recovery after several more years of litigation.

22 The immediacy and certainty of recovery is a factor for the court to balance  
23 in determining whether the proposed settlement is fair, adequate and reasonable.  
24 *See In Re Mego Financial Corporation Securities Litigation*, 213 F.3d 454, 458  
25 (9th Cir. 2000). Hence, the present settlement must be balanced against the  
26 expense, risk and delay of achieving a more favorable result at trial.

27 Approval of the settlement means a present, tangible and significant  
28 recovery for the Class. The benefits are all cash – no coupons whatsoever.

1 Individuals were billed on average approximately \$40.33 in improper finance  
2 charges, and most of the class members (if settlement is approved) will receive  
3 approximately \$10, without needing to file a claim form or dig up records, which  
4 in some cases may be a decade old. The class members, of which there are  
5 approximately 437,918, will be receiving 25% of their total claimed damages on a  
6 completely risk free basis, without any further delay, and without further risk of  
7 dismissal of the entire case.

8 Absent the settlement, the case will proceed with a hearing on Chase's  
9 motion to dismiss, Plaintiff Gary Davis' motion for leave to amend, and Gene  
10 Castillo's motion to intervene. Additional discovery will proceed, if allowed by  
11 the Court, and yet another motion for class certification will take place. If that is  
12 granted, more rounds of motions to dismiss and for summary judgment are  
13 expected. While Class Counsel believes they have well-founded arguments in  
14 support of Plaintiffs' claims, there is no question that settlement at this time  
15 ensures an immediate and substantial recovery for settlement class members with  
16 no further risk whatsoever.

17 **3. The Recommendations of Experienced Counsel Favor the**  
18 **Approval of Settlement**

19 Plaintiffs' counsel have concluded that the settlement is fair, reasonable,  
20 and adequate after carefully considering and evaluating, among other things, the  
21 relevant legal authorities and the substantial data and information provided by  
22 Chase, as well as evaluating the likelihood of prevailing on the merits, the risks,  
23 expense and duration of continued litigation, and the likely appeals and  
24 subsequent proceedings necessary if Plaintiffs did prevail against Chase at trial.  
25 There is no question the settlement is in the best interest of the Class.

26 Due to counsels' extensive efforts over an eight year period on the Class'  
27 behalf and the settlement achieved, Plaintiffs' counsel have provided fair and  
28 adequate representation to the Class. Plaintiffs' counsel have significant

1 experience in complex class action litigation and have negotiated numerous other  
2 substantial class action settlements throughout the country. Where, as here, the  
3 settlement is the product of serious, informed, non-collusive negotiations,  
4 significant weight should be attributed to the belief of experienced Class Counsel  
5 that settlement is in the best interest of the Class. *See National Rural*  
6 *Telecommunications Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.  
7 Cal. 2004) (finding that “‘great weight’ is accorded to the recommendation of  
8 counsel, who are most closely acquainted with the facts of the underlying  
9 litigation.”); *In Re Washington Public Power Supply Systems Securities Litigation*,  
10 720 F. Supp. 1379, 1392 (D. Ariz. 1989), *aff’d sub nom.*, *Class Plaintiffs v. City of*  
11 *Seattle* 955 F.2d 1268, 1296 (9th Cir. 1992).

12 The proposed settlement satisfies the preliminary approval standard. Notice  
13 of a fairness hearing should issue forthwith to the settlement Class.

14 **V. CERTIFICATION OF THE SETTLEMENT CLASS IS PROPER**

15 The parties have stipulated to class certification for settlement purposes  
16 only. (Exh. 1, §3.1.) The Supreme Court has expressly approved the use of a  
17 settlement class. *See Amchem Products v. Windsor*, 521 U.S. 591, 620 (1997).  
18 Plaintiffs request that the court enter an order conditionally certifying a class for  
19 settlement purposes, defined as follows:

20 All Chase Circuit City Rewards Credit Cardmembers with  
21 California billing addresses who, between May 26, 2004 and  
22 the entry of preliminary approval of this Settlement (inclusive),  
23 made a promotional or deferred-interest purchase at Circuit  
24 City and who, as a result of payments or credits being allocated  
25 to a regular purchase balance after the promotional or deferred-  
26 interest balance, paid more in finance charges than they would  
27 have paid if the payments or credits had first been applied to  
28 the regular purchase balance.

1 The agreed upon settlement class satisfies all requirements of Federal Rule  
2 of Civil Procedure 23(a) and (b)(3).

3 **A. The Settlement Class Is So Numerous That Joinder of All**  
4 **Settlement Class Members Is Impracticable**

5 Rule 23(a)(1) requires the Class be so numerous that joinder of all class  
6 members is “impracticable.” That phrase does not require that joinder be  
7 impossible, only that it would be difficult or inconvenient to join all class  
8 members. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th  
9 Cir. 1964). There is no fixed number of class members that either compels or  
10 precludes class certification. *Arnold v. United Artists Theater Circuit, Inc.*, 158  
11 F.R.D. 439, 448 (N.D. Cal. 1994).

12 Here, there is no question that Plaintiffs proposed settlement class satisfies  
13 the numerosity requirement. Confirmatory discovery has revealed that there are  
14 approximately 437,918 class members, and obviously joinder would be highly  
15 impracticable.

16 **B. Common Questions of Law and Fact**

17 Federal Rule of Civil Procedure 23(a)(2) requires that there be questions of  
18 law or fact common to the Class. A common nucleus of operative facts suffices to  
19 satisfy the commonality requirement. *See Moore v. Fitness Intern., LLC*, 2013  
20 WL 3189080, 5 (S.D. Cal. 2013); *Hanlon*, 150 F.3d at 1019-1020. Rule 23’s  
21 “commonality” requirement is not particularly rigorous. Indeed “one significant  
22 issue common to the Class may be sufficient to warrant certification . . . the  
23 necessary showing to satisfy commonality is minimal.” *Blackwell v. Sky West*  
24 *Airlines*, 245 F.R.D. 453, 460 (S.D. Cal. 2007).

25 In this case, there are numerous questions of fact and law that would satisfy  
26 Rule 23(a)(2). This action would require the Court to address the following  
27 questions that undoubtedly affect all class members:

- 28 1. Whether Chase’s payment allocation policy breached the terms of

1 the cardmember contract when Chase gave priority of payment to  
2 promotional items that were not yet due or owing;

3 2. Whether Chase's allocation of payments violates the Unfair  
4 Competition Law because it is contrary to the advertisements used  
5 to promote the promotional purchases;

6 3. Whether Chase's allocation of payments violates the Unfair  
7 Competition Law because it is contrary to the cardmember  
8 contract;

9 4. Whether Chase's payment allocation policy was applied in a  
10 uniform and consistent manner to the Class as a whole.

11 Underlying these basic common questions is a common nucleus of  
12 operative facts pertaining to Chase's marketing of its Circuit City Rewards Card  
13 promotional purchases, and how it allocated its customers' payments on the card.  
14 Thus, the settlement class satisfies the commonality requirement of Federal Rule  
15 of Civil Procedure 23(a).

16 **C. Plaintiffs' Claims Are Typical of Those of the Settlement Class**

17 "Representative claims are typical if they are reasonably co-extensive with  
18 those of absent class members; the need not be substantially identical." *Hanlon*,  
19 150 F.3d at 1020; *accord Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).  
20 Rule 23(a)(3) requires only that there be no express conflict between the  
21 representative parties and the Class over the very issue in litigation and that the  
22 representative's interests are not antagonistic to those of the Class. *Stolz v. United*  
23 *Brotherhood of Carpenters and Joiners, et al.*, 620 F.Supp. 396, 404 (D. Nev.  
24 1985).

25 While this Court recently determined that Plaintiff Gary Davis could not  
26 represent the Class if the Class were to be certified in a ruling by the Court, Chase  
27 has stipulated and agreed, for purposes of certifying a settlement class, to Gary  
28 Davis and Gene Castillo serving as the class representative Plaintiffs, and to their



1 adequacy to serve in that capacity. (Exh. 1, § 3.1.) The typicality requirement is  
2 satisfied here through Plaintiffs serving as class representatives because they and  
3 the settlement class members alleged the same set of operative facts. They and  
4 every putative class member made a promotional or deferred-interest purchase at  
5 Circuit City and had their payments or credits allocated to a regular purchase  
6 balance after the promotional or deferred-interest balance, which resulted in more  
7 finance charges than they would have paid if the payments or credits had first  
8 been applied to the regular purchase balance. There is no dispute that the class  
9 representatives fall directly within these allegations, and thus satisfy the typicality  
10 requirement.

11 **D. The Adequacy Requirement Is Satisfied**

12 Rule 23(a)(4) requires “the representative parties will fairly and adequately  
13 protect the interests of the class.” Courts have established a two-prong test for  
14 this requirement. *See, e.g., In re Apple iPod iTunes Antitrust Litigation*, 2008 WL  
15 5574487, 6 (N.D. Cal. 2008) (citing *Hanlon*, 150 F.3d at 1020); *Schaefer v.*  
16 *Overland Express Family of Funds*, 169 F.R.D. 124, 130 (S.D. Cal. 1996). First,  
17 counsel for the class representatives must be competent to undertake the particular  
18 litigation at hand. Second, there can be no antagonism or disabling conflict  
19 between the interests of the named class representative and the members of the  
20 class. *See Hanlon*, 150 F.3d at 1020.

21 Plaintiffs’ claims do not conflict with the Settlement Class’ claims.  
22 Plaintiffs have vigorously pursued common claims on behalf of themselves and all  
23 Class members. All of Plaintiffs’ claims are directed at resolving the issues raised  
24 by Chase’s allocation of payments to promotional and non-promotional purchases,  
25 an issue common to all Class members. Plaintiffs’ vigorous pursuit of this  
26 litigation confirms their strong interest in achieving a successful result for the  
27 Class. Further, Plaintiffs retained attorneys with extensive experience in the area  
28 of consumer class action litigation who have successfully prosecuted numerous

1 class actions and other complex litigation on behalf of injured consumers in this  
2 District and across the country. There can be no legitimate dispute that Plaintiffs'  
3 Counsel have vigorously and skillfully prosecuted this Litigation, securing a  
4 settlement that is in the Class' best interests. In addition, Chase has stipulated and  
5 agreed, for purposes of certifying a settlement class, that Plaintiffs are adequate  
6 class representatives.

7 The second requirement also is satisfied here. There is no antagonism  
8 between the proposed representatives and the absent Settlement Class members.  
9 All claims arise from the same set of operative facts and course of conduct, and  
10 both Plaintiff and absent Settlement Class members share the common goal of  
11 maximizing recovery. *Lubin v. Sybedon Corp.*, 688 F.Supp. 1425, 1461 (S.D.  
12 Cal. 1988).

13 **E. The Proposed Settlement Class Satisfies Rule 23(b)(3)**

14 In addition to meeting the prerequisites of Rule 23(a), the present action  
15 satisfies the requirements of Rule 23(b)(3), which mandates that common  
16 questions of law or fact predominate over individual questions and that a class  
17 action is superior to other available methods of adjudication. *See Hernandez v.*  
18 *Alexander*, 152 F.R.D. 192, 193-94 (D. Nev. 1993). Here, common questions of  
19 law and fact predominate, and a class action is the superior, if not the only,  
20 method available to fairly and efficiently litigate these claims.

21 **1. Common Questions of Law and Fact Predominate**

22 Where a complaint alleges a common course of misrepresentations,  
23 omissions and other wrongdoings that affect all members of the class in the same  
24 manner, common questions predominate. *Blackie v. Barrack*, 524 F.2d 891,  
25 905-8 (9th Cir. 1975). The Court's inquiry should be directed primarily toward  
26 the issue of liability. *Id.* at 902.

27 There are a host of common questions of law and fact, which Plaintiffs seek  
28 to certify. As discussed above, Plaintiffs seek certification for causes of action

1 arising under the Unfair Competition Law, and basic contract law. Three factual  
2 issues bear on these claims: (i) Chase's application of the terms of its cardmember  
3 agreement with respect to the allocation of payments when a cardholder made  
4 promotional and non-promotional purchases; (ii) Chase's assessment of finance  
5 charges based on its allocation of payments; and (iii) whether Chase's actions  
6 violated the terms of its contract and were contrary to its advertisements. These  
7 common factual issues predominate over any purported individual factual issues.

8           **2.     A Class Action Is Superior to Other Available Methods for**  
9           **Resolving this Controversy**

10           Rule 23(b)(3) also requires the Court to determine that "a class action is  
11 superior to other available methods for fairly and efficiently adjudicating the  
12 controversy." A class action is superior where "classwide litigation of common  
13 issues will reduce litigation costs and promote greater efficiency." *Valentino v.*  
14 *Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

15           The class action vehicle is the superior method for adjudicating relatively  
16 low-value consumer claims. *See, e.g., Miletak v. Allstate Ins. Co.* 2010 WL  
17 809579, 13 (N.D.Cal. 2010) ("a class action is superior when it is the only realistic  
18 form of adjudication available") (citing *Valentino*, 97 F.3d at 1234-35). Where  
19 "each member's claim is likely too small to be worth pursuing in an individual  
20 action . . . a class action may be the only method for providing meaningful  
21 recovery." *Miletak* 2010 WL 809579 at 13; *see also Lowden v. T-Mobile USA,*  
22 *Inc.* 512 F.3d 1213, 1218 (9th Cir. 2008) ("when consumer claims are small but  
23 numerous, a class-based remedy is the only effective method to vindicate the  
24 public's rights").

25           Here, Plaintiffs present class-wide allegations premised on common  
26 evidence. Trying each Class claim separately would be inefficient, when each of  
27 thousands of cases would allege identical misconduct and offer identical proof of  
28 Chase's liability. *See In re Juniper Networks, Inc. Securities Litigation*, 264

1 F.R.D. 584, 592 (N.D. Cal. 2009); *Mejdreck v. Lockformer Co.*, 2002 WL  
2 1838141, 7 (N.D. Ill. 2002). Most of those injured have not been damaged to a  
3 degree where it would be cost-effective for them to seek recovery on their own.  
4 Further, without the class settlement device, Defendant could not obtain a class-  
5 wide release, and therefore would have little, if any, incentive to enter into the  
6 settlement. Certification of the Class for settlement purposes will enable  
7 Plaintiffs' Counsel to handle the administration of the settlement in an organized  
8 and efficient manner. Resolution of Plaintiffs' and the Settlement Class' claims  
9 against Defendant through the proposed Class is superior to any other available  
10 method of resolution. Accordingly, certification of the Class is appropriate.

11 **VI. THE PROPOSED NOTICE IS ADEQUATE**

12 Federal Rule of Civil Procedure 23(c)(2)(B) provides, "[f]or any class  
13 certified under Rule 23(b)(3), the court must direct to class members the best  
14 notice that is practicable under the circumstances, including individual notice to  
15 all members who can be identified through reasonable effort." Rule 23(e)(1) says,  
16 "[t]he court must direct notice in a reasonable manner to all class members who  
17 would be bound by the proposal."

18 Where notice is being sent in connection with a proposed settlement, the  
19 notice must inform class members about the settlement's terms and their options  
20 with respect thereto. *See Torrissi*, 8 F.3d at 1374 (9th Cir. 1993).

21 The notice to a Rule 23(b)(3) class must concisely and clearly state in plain,  
22 easily understood language:

- 23 • the nature of the action,
- 24 • the definition of the class certified,
- 25 • the class claims, issues, or defenses,
- 26 • that a class member may enter an appearance through counsel if the
- 27 member so desires,
- 28 • that the court will exclude from the class any member who requests

1 exclusion, stating when and how members may elect to be excluded,  
2 and

- 3 • the binding effect of a class judgment on class members under Rule  
4 23(c)(3).

5 In accordance with Rule 23, the Parties have negotiated a Full Notice of  
6 Settlement and a Postcard Notice (the “Notices”) to be disseminated to the  
7 Settlement Class. The Postcard Notice and the Full Notice are attached to the  
8 Pomerance Declaration as Exhibits 2 and 3, respectively. The Postcard Notice  
9 will be sent by U.S. mail to all Settlement Class members who can be identified  
10 with reasonable effort through Chase’s records to inform them about the  
11 settlement’s terms, their rights in connection with the settlement, and the date of  
12 the Final Fairness Hearing, at which time the Court will consider final approval of  
13 the settlement and attorneys’ fees and expenses. The Postcard Notice will provide  
14 a link to the Settlement Website for class members to obtain the Full Notice of  
15 Settlement.

16 The Full Notice will be available on the website described in the postcard  
17 notice as well as being made available via mail from the administrator to those  
18 who call in and request the full notice. *See Manual for Complex Litigation 4<sup>th</sup>* at  
19 §21.311 (“many courts include the Internet as a component of class certification  
20 and class settlement notice programs.”). The Full Notice describes in simple  
21 language the nature, history and status of the Litigation, sets forth the Class  
22 definition, states the Class claims and issues, discloses the right of people who fall  
23 within the Class definition to exclude themselves from it, as well as the deadline  
24 and procedure for doing so and warns of the binding effect of the settlement  
25 approval proceedings on people who stay in the Class.

26 In addition, the Full Notice describes the Settlement and sets forth the  
27 benefits Plaintiffs propose to distribute among the Class, sets out the amount of  
28 attorneys’ fees and expenses that Plaintiffs’ Counsel intend to seek in connection

1 with final settlement approval, including the amount of the requested fees and  
2 expenses, provides contact information for Counsel, and summarizes the reasons  
3 the Parties are proposing the settlement. The Full Notice discloses the date, time  
4 and place of the formal fairness hearing, and the procedures for commenting on  
5 the settlement and appearing at the hearing. The contents of the Full Notice  
6 therefore satisfy all applicable requirements.

7 Plaintiffs believe notice via U.S. mail is the best notice practicable under  
8 the circumstances, exceeds the notice given in other consumer class actions, and  
9 exceeds due process requirements. *See generally Torrissi*, 8 F.3d at 1374; *In re*  
10 *Domestic Air Transp. Antritrust Litig.*, 141 F.R.D. 534, 548-53 (N.D. Ga. 1992)  
11 (holding that under certain circumstances notice by publication only satisfies due  
12 process requirements). In addition, the Full Notice will be posted on the Claims  
13 Administrator's website. *See Farinella v. PayPal, Inc.*, 611 F. Supp.2d 250, 256  
14 (E.D.N.Y. 2009) (approving "multifaceted notice program" that included website  
15 notice).

16 Notice of this Settlement also shall be provided to state and federal officials  
17 in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C.  
18 §1715(a) and (b), which requires appropriate state and federal officials to be  
19 provided with the Complaint (or information on how to access it), the Settlement  
20 Agreement and Class notices, and information on the Class' composition.  
21 Accordingly, in granting preliminary settlement approval, the Court should also  
22 approve the Parties' proposed form and method of giving notice to the Class.

## 23 **VII. SCHEDULE OF EVENTS**

24 In connection with the settlement's preliminary approval, the Court must set  
25 a final approval hearing date, dates for mailing the Postcard Notice and deadlines  
26 for objecting to the settlement, opting out of the Class, and filing papers in support  
27 of the Settlement. If the Court enters the Notice Order at the hearing on Plaintiffs'  
28 Motion for Preliminary Approval of Class Action Settlement, Plaintiffs propose

the following schedule:<sup>1</sup>

Last day to mail postcard notice to Class July 3, 2014

Last day for Settlement Class members to August 18, 2014  
opt-out of settlement

Last day for Settlement Class members to August 18, 2014  
object to settlement

Date by which to file papers in support of July 28, 2014  
settlement, and request for attorneys' fees  
and expenses

Final Approval Hearing September 22, 2014  
at 10:00 a.m.

#### **VIII. CONCLUSION**

This Settlement is the result of an eight year litigation odyssey involving extensive investigation, analysis and discovery, multiple and complex motion work, three formal mediation sessions, and hard fought negotiations by experienced arm's length counsel. The Settlement provides real, tangible and immediate relief to consumers without any further costs or delay. For the reasons

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<sup>1</sup> These dates have been proposed in anticipation of the instant unopposed motion being heard on an expedited basis on May 5, 2014. The parties have concurrently filed a Stipulation and Proposed Order to set the hearing on that date, per the Court's prior tentative approval of the hearing being set on an expedited basis. The suggested dates are therefore subject to change if the instant motion is heard after May 5, 2014.

1 set forth above, the proposed settlement warrants the Court's preliminary  
2 approval.

3  
4  
5 DATED: April 23, 2014 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

6 By: s/ Drew E. Pomerance  
7 DREW E. POMERANCE  
8 BURTON E. FALK  
9 Attorneys for Plaintiffs GARY DAVIS and  
10 GENE CASTILLO, individually,  
11 as Private Attorney Generals, and on behalf  
12 of all others similarly situated

13 DATED: April 23, 2014 WESTERMAN LAW CORP.

14 By: s/ Jeff Westerman  
15 JEFF WESTERMAN  
16 JORDANNA G. THIGPEN  
17 Attorneys for Plaintiffs GARY DAVIS and  
18 GENE CASTILLO, individually,  
19 as Private Attorney Generals, and on behalf  
20 of all others similarly situated

21 DATED: April 23, 2014 MILBERG LLP

22 By: s/ Nicole Duckett Fricke  
23 NICOLE DUCKETT FRICKE  
24 Attorneys for Plaintiffs GARY DAVIS and  
25 GENE CASTILLO, individually,  
26 as Private Attorney Generals, and on behalf  
27 of all others similarly situated  
28



**CERTIFICATE OF SERVICE**

I hereby certify that, on April 23, 2014, a true and correct copy of the foregoing PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF was filed electronically and served by U.S. Mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by facsimile to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

s/ Elia Ramirez  
Elia Ramirez

**EXHIBIT B**

**Declaration of Drew E. Pomerance**

1 Drew E. Pomerance, Esq. (SBN. 101239), dep@rpnalaw.com  
2 Burton E. Falk, Esq. (SBN. 100644), bef@rpnalaw.com  
3 David R. Ginsburg, Esq. (SBN. 210900), drg@rpnalaw.com  
4 **ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP**  
5 5820 Canoga Avenue, Suite 250  
6 Woodland Hills, California 91367  
7 Telephone: (818) 992-9999  
8 Facsimile: (818) 992-9991

9 [Additional Counsel Continued On Next Page]

10 Attorneys for Plaintiffs GARY DAVIS and  
11 GENE CASTILLO, individually,  
12 as Private Attorney Generals, and on behalf  
13 of all others similarly situated

14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 GARY DAVIS, an individual; on  
17 behalf of himself, and as PRIVATE  
18 ATTORNEY GENERAL, and on  
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 CHASE BANK U.S.A., N.A., a  
23 Delaware corporation; and DOES 1  
24 through 50, inclusive,

25 Defendants.

Case No. CV 06 4804 DDP (PJWx)

Honorable Dean D. Pregerson

**DECLARATION OF  
DREW E. POMERANCE IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENT**

**[Motion for Preliminary Approval  
Filed Concurrently; [Proposed]  
Order Lodged Concurrently]**

**Date: June 2, 2014**

**Time: 10:00 a.m.**

**Courtroom: 3**

1 Jeff Westerman, Esq. (SBN. 94559)  
2 jwesterman@jswlegal.com  
3 Jordanna G. Thigpen, Esq. (SBN. 232642)  
4 jthigpen@jswlegal.com  
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6 1925 Century Park East, Suite 2100  
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10 Nicole Duckett Fricke, Esq. (SBN. 198168)  
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13 One California Plaza  
14 300 South Grand Avenue, Suite 3900  
15 Los Angeles, California 90071  
16 Telephone: (213) 617-1200  
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Attorneys for Plaintiffs GARY DAVIS and  
GENE CASTILLO, individually,  
as Private Attorney Generals, and on behalf  
of all others similarly situated

**DECLARATION OF DREW E. POMERANCE**

I, Drew E. Pomerance do hereby state and declare as follows:

1. I am an attorney at law, duly licensed to practice before the United States District Court for the Central District of California, and am a Senior Partner at Roxborough, Pomerance, Nye & Adreani, LLP, co-counsel for Plaintiffs. I have personal knowledge of all facts stated in this declaration, and if called as a witness, I could and would competently testify to all matters set forth herein.

2. The parties initially participated in private mediation on June 18, 2009.

3. A second mediation with a different neutral, the Honorable Edward Infante, Ret., took place on November 16, 2011. The parties remained unable to resolve the litigation.

4. Following the Court's denial of Plaintiff's Motion for Class Certification, the parties participated in a third mediation on October 22, 2013. This mediation was again held with Judge Infante.

5. Along with Jeff Westerman of Westerman Law Corp., I attended on behalf of the Class, while Chase was represented by its attorneys, Julia Strickland and Stephen Newman of Stroock & Stroock & Lavan, LLP. Also attending the mediation on behalf of Chase were several of its authorized representatives.

6. The mediation session lasted all day, and resulted in a tentative agreement which was subject to confirmatory discovery whereby Chase would have to verify under oath the size of the Class, the amount of finance charges that Plaintiffs contend were improperly charged and collected by Chase, and the period of time in which the promotional purchases were made.

7. Chase produced a detailed declaration under penalty of perjury from Suzanne Morgan, a Risk Director in Chase's Risk Department who has worked for Chase or its predecessor Bank One since 1997. Ms. Morgan is familiar with

1 and oversaw the compilation of data that produced information necessary for my  
2 co-counsel and me to evaluate the reasonableness of the settlement.

3 8. After carefully evaluating Ms. Morgan's declaration, my co-counsel  
4 and I determined that the existing deal adequately compensates the Class.

5 9. The settlement agreement calls for Chase to establish a settlement  
6 fund totaling \$5.5 million.

7 10. My co-counsel and I are now confident that we have properly  
8 evaluated the risks of further prosecuting this class action as compared to the  
9 benefits of the current settlement proposal, and as well have appropriately  
10 evaluated the reasonableness of the benefits that will be going to the Class.

11 11. Given the substantial delays resulting from further prosecution of this  
12 lawsuit, Chase's pending motion for dismissal, the Court's denial of the Motion  
13 for Class Certification, and the serious and fundamental question of whether the  
14 Class would ever prevail on the merits, my co-counsel and I are confident that this  
15 settlement entered into at this time, and on these terms, is more than fair and  
16 reasonable, and should be preliminarily approved by this Court.

17 12. The Settlement Agreement and Exhibits A-E, which are a part of, and  
18 referenced in, the Settlement Agreement, are attached collectively as Exhibit 1.

19 13. Based on confirmatory discovery, there are approximately 437,918  
20 class members who are eligible to receive direct payments.

21 14. The discovery has also disclosed that this group incurred an average  
22 finance charge of approximately \$40.33.

23 15. The direct payments to class members should be approximately \$10  
24 each.

25 16. Thus, this group is receiving back approximately 25% of what they  
26 allege to be their damages.

27 17. The attorneys' fees were negotiated separately from and after the  
28 parties reached their agreement on the benefits going to the Class.

1 18. As a result of extensive negotiations and discovery, my co-counsel  
2 and I have been able to fairly and properly evaluate the risks of litigation and the  
3 propriety of this settlement.

4 19. In addition to formal discovery over the course of several years, my  
5 co-counsel and I also conducted a thorough investigation and analysis of data that  
6 was voluntarily supplied under oath by Chase's authorized representative.

7 20. The information my co-counsel and I received from Chase through  
8 both formal and informal discovery was detailed, thorough, and directly  
9 responsive to our inquiries.

10 21. After analyzing the discovery, my co-counsel and I persisted in  
11 asking follow up questions which Chase answered. In addition to carefully  
12 studying the information obtained through formal and informal confirmatory  
13 discovery, my co-counsel and I have also carefully evaluated the legal issues,  
14 including the Court's denial of the Motion for Class Certification, the potential  
15 that the Court may grant Chase's motion to dismiss, and the likelihood of  
16 prevailing on the merits.

17 22. My co-counsel and I believe that we have sufficiently analyzed both  
18 the liability and damages information necessary to properly evaluate the propriety  
19 of the settlement. Based on this analysis, and the current status of the case, we  
20 have determined that a settlement of \$5.5 million is in the best interest of the  
21 Class, and that the Court should preliminarily approve this settlement as fair,  
22 reasonable, and in the best interest of the Class.

23 23. I am a 1981 Graduate of Hastings College of the Law, and have  
24 practiced complex business litigation for over 30 years. I am a member of the  
25 American Board of Trial Advocates (ABOTA), and was recently voted as one of  
26 the Top 25 Lawyers in the San Fernando Valley by the San Fernando Valley Bar  
27 Journal. I am AV rated by Martindale-Hubbell.

1 24. I have been lead counsel and trial attorney in the following California  
2 class action lawsuits, all of which except for the last one on this list have been  
3 resolved as of the date of this declaration:

- 4 • *R&M Food Services, Inc., et al. v. Fremont Compensation Insurance*  
5 *Company, et al.*, Los Angeles County Superior Court Case No. BC  
6 155301;
- 7 • *Coles Carpet, et al. v. Superior National Insurance Group, et al.*, Los  
8 Angeles County Superior Court Case No. BC 159813;
- 9 • *Notrica's 32nd Street Market v. California Compensation Insurance*  
10 *Company*, Los Angeles County Superior Court Case No. BC 157151;
- 11 • *Arrow Air Conditioning Co. v. Golden Eagle Insurance Company*,  
12 *Riverside County Superior Court Case No. 284825*;
- 13 • *Faris Brothers of California v. Liberty Mutual Insurance Company*,  
14 *Los Angeles County Superior Court Case No. BC 217855*;
- 15 • *Hersch & Ziff Inc. v. Nationwide Mutual Insurance Company*, Los  
16 *Angeles County Superior Court Case No. BC 157667*;
- 17 • *California Sample Services, Inc. v. Pacific Rim Assurance Company*,  
18 *Los Angeles County Superior Court Case No. BC 153695*;
- 19 • *Drasin Knitting Mills, et al v. Zenith Insurance Company*, Los  
20 *Angeles County Superior Court Case No. BC 163825*;
- 21 • *Apple One Services, Ltd. v. American Home Assurance Company, et*  
22 *al.*, Los Angeles County Superior Court Case No. BC 155301;
- 23 • *9008 Group, Inc., et al. v. TIG Insurance Company, et al.*, Los  
24 *Angeles County Superior Court Case No. BC 157795*;
- 25 • *L.A. Airline, Inc. v. Republic Indemnity Company of California, et.*  
26 *al.*, Los Angeles Superior Court Case No. BC 156891;
- 27 • *Shaefer Ambulance Service v. State Compensation Insurance Fund*,  
28 *Orange County Superior Court Case No. 725063*;



- 1 • *Graciala Virgin, et. at. v. Allstate Insurance Co.*, Los Angeles
- 2 Superior Court Case No. BC 212492;
- 3 • *A&J Liquor, et. al. v. State Compensation Insurance Fund*, San
- 4 Francisco Superior Court Case No. 975982;
- 5 • *David Braverman v. Citicorp Development Center, Inc. et al.*, Los
- 6 Angeles Superior Court Case No. BC 277920;
- 7 • *Sisson v. CableCom*, Los Angeles Superior Court No. BC 314007;
- 8 • *MacKay v. 21<sup>st</sup> Century Ins.*, Los Angeles Superior Court No.
- 9 BC297438
- 10 • *Milgram v. Chase Bank*, United States District Court, Case No.
- 11 CV 10-00336 GW (PJWx); and
- 12 • *Augustus v. ACSS*, Los Angeles Superior Court No. BC 347914

13 25. In the *A&J Liquor* case, *supra*, I served as co-lead trial counsel,  
14 along with Don Carlson of Carlson, Calladine & Peterson, in taking that matter to  
15 verdict in a seven month trial in San Francisco Superior Court. This was one of  
16 the few California class action cases to be tried to a verdict.

17 26. In addition, I have been lead trial counsel on any number of  
18 representative actions under California Business & Professions Code, §17200 et.  
19 seq., and I have been appellate counsel on approximately 12 published decisions in  
20 the California Courts of Appeal. I have also successfully appeared and argued  
21 before the California Supreme Court, in a class action lawsuit involving over a  
22 hundred thousand California businesses who sued their workers compensation  
23 insurance carrier for bad faith practices resulting in unjustifiable premium  
24 increases. *See State Compensation Insurance Fund v. Superior Court* (2001) 24  
25 Cal.4th 930. In addition, in the following class action cases on behalf of  
26 consumers in insurance matters involving Proposition 103, I was lead counsel  
27 both at trial and on appeal: *Donabedian v. Mercury* (2004) 116 Cal. App.4th 968;  
28 *Farmers Insurance Exchange v. Superior Court (Ryan)* (2006) 137 Cal.App.4th

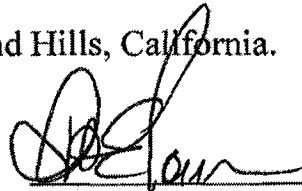
1 842; and most recently in *MacKay v. 21<sup>st</sup> Century* (2010) 188 Cal.App.4<sup>th</sup> 1427.

2 27. My experience in the above class action matters has provided me  
3 with the requisite knowledge and expertise to properly evaluate the chances of  
4 success and the contingent risks in the instant case.

5 28. Attached as Exhibit 2 is the proposed Postcard Notice, which will be  
6 mailed to all class members.

7 29. Attached as Exhibit 3 is the Full Notice of Settlement, which will be  
8 posted on the Administrator's website.

9  
10  
11 I declare under penalty of perjury, under the laws of the United States of  
12 America, that the foregoing is true and correct and that this declaration is executed  
13 this 23<sup>rd</sup> day of April, 2014, at Woodland Hills, California.

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16 DREW E. POMERANCE  
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# Exhibit 1

### **STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement is entered into by and between GARY J. DAVIS and GENE CASTILLO, individually and as putative representatives of the Settlement Class (defined in Section 3.2 below), on the one hand, and Chase Bank USA, N.A., on the other hand, subject to preliminary and final approval by the District Court, by and through their respective counsel.<sup>1</sup>

#### **I. RECITALS**

This Agreement is made with reference to and in contemplation of the following facts and circumstances.

##### **1.1. The Pending Action.**

In the Lawsuit, Plaintiffs allege that Chase improperly allocated payments or credits to regular purchase balances on Circuit City Rewards Credit Cards after promotional or deferred interest balances and that, as a result, cardholders paid excessive finance charges. The claims presented include: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) violation of California Civil Code Section 1750 *et seq.*; and (4) violation of California Business and Professions Code Section 17200 *et seq.* Plaintiffs seek compensatory and punitive damages, injunctive relief, restitution and/or disgorgement, pre-judgment and post-judgment interest, and attorneys' fees and costs on behalf of themselves and a putative class.

##### **1.2. Chase's Denial Of Liability.**

Chase vigorously denies all claims asserted in the Lawsuit, denies all allegations of wrongdoing and liability and contends that its pending motion to dismiss is well-taken and, if decided, would result in dismissal of the Lawsuit. Chase further maintains that Plaintiffs' motion to intervene or add a new named plaintiff is without merit and would be denied. Chase nevertheless

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<sup>1</sup> Section II below contains the definitions of capitalized terms utilized herein unless otherwise noted.

desires to settle all claims that are asserted, or which could have been asserted, on the terms and conditions set forth herein, solely for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies that engendered the Lawsuit. Nothing in this Agreement or any other document may be construed as an admission or evidence of any violation of any federal or state statute, rule or regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever, or of the truth of any of the claims asserted or to be asserted in the Lawsuit, or of the infirmity of any defenses that have been raised or could have been raised by Chase. Further, Chase is not estopped from challenging allegations in the Lawsuit in further proceedings in this or any other action if the Settlement is not finally approved.

1.3. Settlement Through Mediation.

Plaintiffs' Counsel and counsel for Chase engaged in extensive, good faith arm's-length negotiations, including by participating in formal mediation sessions on June 18, 2009, November 16, 2011 and October 22, 2013. The Parties' negotiations at the October 22, 2013 mediation resulted in an agreement on the principal terms of a settlement. All prior agreements and understandings are now superseded and replaced by this Agreement. It is the Parties' desire and intention by entering into this Agreement to effect a full, complete and final settlement and resolution of all existing disputes and claims that relate to or arise out of the facts and claims alleged or which could have been alleged in the Lawsuit.

1.4. Plaintiffs' Counsel's Investigation.

After multiple depositions, numerous sets of interrogatories, requests for admissions, extensive document productions and post-mediation confirmatory discovery, Plaintiffs' Counsel have concluded that a settlement with Chase, on the terms set forth herein, is fair, reasonable, adequate and in the best interests of the Settlement Class based upon their investigation, and taking into account the sharply contested issues involved, Chase's arguments that problems of proof and legal defenses may be an impediment to the claims asserted by Plaintiffs, the risks, uncertainty and

cost of further prosecution of the Lawsuit, and the substantial benefits to be received pursuant to this Agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, it is hereby STIPULATED AND AGREED, subject to the District Court's approval as required by Federal Rule of Civil Procedure 23, that each and every Claim, as described in Section 2.10 below, will be fully and finally settled and compromised and dismissed with prejudice, and will be fully discharged and released, upon and subject to the following terms and conditions:

## II. DEFINITIONS

- 2.1. "Agreement" or "Settlement" means this Stipulation and Agreement of Settlement, including all exhibits hereto.
- 2.2. "Amended Complaint" means the Proposed Second Amended Class Action Complaint filed in the District Court on February 1, 2013 at Docket Entry 293-2.
- 2.3. "APR" means Annual Percentage Rate.
- 2.4. "CAFA Notice" means such notice as may be required pursuant to the Class Action Fairness Act of 2005.
- 2.5. "Chase" means Chase Bank USA, N.A., in its own capacity and as successor by merger to Bank One, Delaware, N.A.
- 2.6. "Circuit City" means Circuit City Stores, Inc.
- 2.7. "Circuit City Bankruptcy" means Case No. 08-35653 in the United States Bankruptcy Court for the Eastern District of Virginia.
- 2.8. "Circuit City Rewards Credit Card" means the credit card issued by Chase and co-branded with Circuit City, which has been the subject of the Litigation.
- 2.9. "Circuit City Rewards Credit Cardmember" and "Circuit City Rewards Credit Cardholder" mean the obligor, payor or authorized user on a Circuit City Rewards Credit Card.

2.10. "Claim" and "Claims" mean any and all actual or potential claims, actions, causes of action, suits, counterclaims, cross claims, third party claims, contentions, allegations, and assertions of wrongdoing, and any demands for any and all debts, obligations, liabilities, damages (whether actual, compensatory, treble, punitive, exemplary, statutory or otherwise), attorneys' fees, costs, expenses, restitution, disgorgement, injunctive relief, any other type of equitable, legal or statutory relief, any other benefits, or any penalties of any type whatsoever, whether known or unknown, suspected or unsuspected, contingent or non-contingent, or discovered or undiscovered, whether asserted in federal court, state court, arbitration or otherwise, and whether triable before a judge or jury or otherwise, including, without limitation, those that were alleged, or that could have been alleged based on the same or similar facts and circumstances, in the Lawsuit.

2.11. "Direct Pay Settlement Class Member" means a Settlement Class Member who is not a Returned Mail Settlement Class Member.

2.12. "District Court" means the United States District Court, Central District of California.

2.13. "Effective Date" means five (5) business days after the Judgment has become Final.

2.14. "Final" means the date the Judgment becomes final for all purposes because either (i) no appeal has been filed and the time within which an appeal may be filed has expired, or (ii) if a timely appeal has been filed, the appeal is finally resolved, with no possibility of further appellate or other review, resulting in final judicial approval of the Settlement.

2.15. "Final Approval Order" means the order to be entered by the District Court in the Lawsuit finally approving this Settlement and resolving all issues between the Parties, as provided for in Section 9.1 below, substantially in the form attached hereto as Exhibit B.

2.16. "Final Fairness Hearing" means the hearing at which the District Court will consider and finally decide whether to approve the Settlement provided for in this Agreement, enter Judgment and make such rulings as are contemplated by this Agreement.

2.17. "First Direct Payment" means the payments described in Sections 4.5 through 4.6 below, and "Second Direct Payment" means the payments described in Sections 4.7 through 4.8 below.

2.18. "Judgment" means a final judgment and order of dismissal with prejudice to be entered by the District Court concurrently with the Final Approval Order, substantially in the form attached hereto as Exhibit E.

2.19. "Last Direct Payment" means the Second Direct Payment, or if no Second Direct Payment is made, then the First Direct Payment.

2.20. "Lawsuit" means the putative class action entitled Davis v. Chase Bank USA, N.A., United States District Court, Central District of California, Case No. 2:06-CV-04804-DDP-PJW.

2.21. "Long-Form Notice" means the notice informing Settlement Class Members of their rights under this Agreement, substantially in the form attached hereto as Exhibit D.

2.22. "Lost Check Settlement Class Member" means a Direct Pay Settlement Class Members whose First Direct Payment or Second Direct Payment was lost, stolen or otherwise destroyed.

2.23. "Mediator" means the Honorable Edward A. Infante (Ret.), or if he becomes unable or unwilling to serve, such other person as may be mutually acceptable to Plaintiffs' Counsel and counsel for Chase, but in the absence of mutual agreement as to a substitute, such United States Magistrate Judge as may be appointed by the District Court to perform the function of "Mediator" solely for purposes of Section 11.2 below.

2.24. "NCOA" means the United States Postal Service National Change of Address system.

2.25. "Net Settlement Fund" means the Settlement Fund plus interest accrued thereon subsequent to deposit, and less the following:



- a. All costs and fees incurred by the Settlement Administrator, including, without limitation, all costs of Class Notice, CAFA Notice and claims administration, except those amounts associated with a Second Direct Payment, if any;
  - b. All taxes and tax expenses as identified in Section 4.12;
  - c. Any District Court-approved attorneys' fees, costs and expenses; and
  - d. Any District Court-approved service awards to Plaintiffs.
- 2.26. "Notice" means the method of notice set forth in Section 7.2 below.
- 2.27. "Parties" means Chase and Plaintiffs.
- 2.28. "Plaintiffs" means Gary J. Davis and Gene Castillo, individually and as putative representatives of the Settlement Class.
- 2.29. "Plaintiffs' Counsel" and "Class Counsel" mean Westerman Law Corp., Roxborough, Pomerance, Nye & Adreani, LLP and Milberg LLP.
- 2.30. "Postcard Notice" means the form of notice described in Section 7.2 below and substantially in the form attached hereto as Exhibit C.
- 2.31. "Preliminary Approval Order" means an order to be entered by the District Court in the Lawsuit, as provided for in Section 8.1 below, substantially in the form attached hereto as Exhibit A.
- 2.32. "Released Claims" means the Claims released by this Agreement as set forth in Section 6.1 and 6.2 below.
- 2.33. "Released Parties" means Chase, together with its predecessors, successors (including, without limitation, acquirers of all or substantially all of its assets, stock or other ownership interests) and assigns; the past, present, and future, direct and indirect, parents (including but not limited to holding companies and JPMorgan Chase & Co.), subsidiaries and affiliates of any of the above; and the past, present and future principals, trustees, partners, claims administrators

(including, without limitation, the Settlement Administrator), officers, directors, employees, agents, attorneys, shareholders, advisors, predecessors, successors, assigns, representatives, heirs, executors, and administrators of any of the above.

2.34. "Remaining Residual Funds" means the amount remaining in the Settlement Fund, if any, ninety (90) days after the mailing of the Last Direct Payment.

2.35. "Residual Funds" means the amount remaining in the Settlement Fund ninety (90) days after the First Direct Payment is mailed, if any, less the expected administration costs of a Second Direct Payment.

2.36. "Returned Mail Settlement Class Member" means a Settlement Class Member whose Postcard Notice was returned to the Settlement Administrator as undeliverable and for whom the Settlement Administrator was unable to determine a valid address prior to calculating the First Direct Payment.

2.37. "Second Direct Pay Settlement Class Member" means a Settlement Class Member who negotiated his or her First Direct Payment within ninety (90) days of its mailing, or a Settlement Class Member who filed a Valid Claim with the Settlement Administrator pursuant to Section 4.10 below within ninety (90) days of the mailing of the First Direct Payment.

2.38. "Settlement Administrator" means Gilardi & Co. LLC, the third party administrator agreed to by the Parties to administer the Settlement as set forth in this Agreement, or such other administrator as may be agreed to by the Parties or ordered by the Court.

2.39. "Settlement Class" and "Settlement Class Member" mean, include and refer to Plaintiffs and all other persons and/or entities that fall within the definition of the Settlement Class, certified solely for purposes of the Settlement, as described in Section 3.2 below.

2.40. "Settlement Fund" means the amount described in Section 4.1 below.

2.41. "Settlement Website" means the website that the Settlement Administrator will establish pursuant to Section 7.3 below.

2.42. "Valid Claim" means a written claim presented to the Settlement Administrator by a Returned Mail Settlement Class Member or a Lost Check Settlement Class Member consisting of: (i) his or her name, address and telephone number; (ii) the last four digits of his or her Circuit City Rewards Credit Card account number(s); and (iii) a sentence certifying that he or she is a Settlement Class Member who has lost, had stolen, otherwise had destroyed or did not receive a First Direct Payment and/or a Second Direct Payment.

### **III. THE SETTLEMENT CLASS**

3.1. Certification Of Settlement Class For Settlement Purposes Only. Chase disputes that the elements of Federal Rule of Civil Procedure 23 are satisfied for purposes of a litigation class, disputes that a litigation class would be manageable and denies that any litigation class may be certified in the Lawsuit. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Chase does not oppose certification for settlement purposes only of the Settlement Class. The Parties further agree that solely for purposes of certifying a settlement class, both Gary Davis and Gene Castillo are adequate class representatives; Chase agrees that for settlement purposes only, it will stipulate to Davis and Castillo serving as the class representatives, but in the event that the Settlement does not become Final for any reason, and the Parties return to litigating this case, Chase reserves all of its defenses and arguments against Davis and Castillo serving as class representatives. No agreements made by Chase in connection with the Settlement may be used by Plaintiffs, any Settlement Class Member, or any other person, to establish any of the elements of class certification, other than for settlement purposes. Preliminary certification of a Settlement Class will not be deemed a concession that certification of a litigation class is appropriate, nor is Chase estopped from challenging class certification in further proceedings in the Lawsuit or in any other action, if the Settlement is not finally approved.

3.2. Definition Of The Settlement Class. Solely for purposes of this Settlement, the Parties agree to certification of the following Settlement Class:

All Chase Circuit City Rewards Credit Cardmembers with California billing addresses who, between May 26, 2004 and the entry of preliminary approval of this Settlement (inclusive), made a promotional or deferred-interest purchase at Circuit City and who, as a result of payments or credits being allocated to a regular purchase balance after the promotional or deferred-interest balance, paid more in finance charges than they would have paid if the payments or credits had first been applied to the regular purchase balance.

The Settlement Class will be certified pursuant to Federal Rule of Civil Procedure 23(b)(3), and all Settlement Class Members will have the right to exclude themselves by way of an opt-out procedure set forth in the Preliminary Approval Order.

#### **IV. THE SETTLEMENT FUND**

4.1. The Settlement Fund. In full and complete settlement of the Lawsuit as set forth herein, Chase will pay Five Million Five Hundred Thousand Dollars (\$5,500,000) for the benefit of the Settlement Class.

4.2. Timing of Payments to Settlement Fund. Chase will provide payments to the Settlement Fund as follows:

- a. Within fifteen (15) days following entry of the Preliminary Approval Order, Chase will cause the sum of Two Hundred Thousand Dollars (\$200,000) to be deposited into the Settlement Fund, which sum reflects the parties' reasonable estimate of the costs of Notice to the Settlement Class and for the related services of the Settlement Administrator prior to the Effective Date.
- b. Within fifteen (15) days of the Final Approval Order, Chase will cause all other sums due pursuant to this Agreement to be deposited into the Settlement Fund.

4.3. Credit For Advances On Behalf Of The Settlement Fund. Payments of any notice or administration costs or expenses advanced by Chase, before or after the Settlement Fund is created, are to be treated as contributions to the Settlement Fund as set forth above in Section 4.1 and will be credited in their entirety (100%) towards Chase's obligations thereunder.

4.4. Distribution Of The Settlement Fund. The Settlement Fund, together with any interest accrued thereon subsequent to deposit, is to be distributed as follows:

- a. First, to pay the costs of Notice and the costs of Settlement Administration, except those amounts associated with a Second Direct Payment, if any;
- b. Second, within fifteen (15) days after the Effective Date, to pay Class Counsel's attorneys' fees and cost and service awards to Plaintiffs in the amounts approved by the Court, pursuant to Section 5.1 below;
- c. Third, but not earlier than thirty (30) days after the Effective Date, to make payments to Settlement Class Members as set forth in Sections 4.5 through 4.10 below and the Settlement Administrator for costs associated with a Second Direct Payment, if any;
- d. Fourth, if any amount remains after payments pursuant to Sections 4.4(a) through (c) above, to contribute to such charitable organization as the Parties may hereafter agree, or if they cannot agree, as the District Court may order.

4.5. Calculation Of First Direct Payments. To determine the amount of each First Direct Payment, the Settlement Administrator will divide the Net Settlement Fund by the number of accounts held by Direct Pay Settlement Class Members.

4.6. First Direct Payment To Direct Pay Settlement Class Members. The First Direct Payment will be mailed by the Settlement Administrator within forty-five (45) days of the Effective Date in the amount determined under Section 4.5.

4.7. Calculation Of Second Direct Payments. To determine the amount of each Second Direct Payment, if any, the Settlement Administrator will divide the Residual Funds by the number of accounts held by Second Direct Pay Settlement Class Members.

4.8. Second Direct Payment To Direct Pay Settlement Class Members. If sufficient Residual Funds remain one hundred and eighty (180) days after mailing of the First Direct Payment

so that each Second Direct Pay Settlement Class Member would receive a payment of at least three dollars (\$3.00) from the Residual Fund pursuant to Section 4.7, a Second Direct Payment will be made by the Settlement Administrator by mailing checks in the amount determined under Section 4.7.

4.9. Returned Checks. If any First Direct Payments and/or Second Direct Payments are returned to the Settlement Administrator within ninety (90) days of their respective mailings, the Settlement Administrator will make a reasonable effort to determine an updated mailing address for each returned check. For each check that an updated address is found for, the Settlement Administrator will forward the check to that address, but if updated information is not available, the Settlement Administrator will destroy the check.

4.10. Payment To Returned Mail Settlement Class Members And Lost Check Settlement Class Members. Returned Mail Settlement Class Members and Lost Check Settlement Class Members who submit Valid Claims to the Settlement Administrator within ninety (90) days of the mailing of the Last Direct Payment will receive payment from the Remaining Residual Funds, if sufficient funds exist, in the amount they would have been entitled to receive in either a First Direct Payment or Second Direct Payment or both. If insufficient funds remain to pay all Valid Claims, Valid Claims will be paid in the order received by the Settlement Administrator until there are insufficient Remaining Residual Funds to make payments. Whether a claim is a Valid Claim will be determined in the sole discretion of the Settlement Administrator. Payments made pursuant to Section 4.10 will be made no sooner than ninety (90) days after the mailing of the Last Direct Payment and no later than one hundred ninety (190) days after the mailing of the Last Direct Payment.

4.11. Time To Negotiate Payments. Settlement Class Members must negotiate any payments made under this Agreement within one hundred eighty (180) days after the date appearing

on the check. There will be no further obligation to pay Settlement Class Members who fail to comply, except as established in Section 4.10 above.

4.12. Interest. Fifty percent (50%) of any interest accrued on the Settlement Fund prior to the Effective Date will be remitted to Chase. If the Effective Date does not occur, one hundred percent (100%) of the interest will be returned to Chase.

4.13. Settlement Fund Tax Status. The Settlement Fund will be treated at all times as a "Qualified Settlement Fund" within the meaning of Treasury Regulation §1.468B-1. Class Counsel and, as required by law, Chase, will jointly and timely make such elections as necessary or advisable to fulfill the requirements of such Treasury Regulation. For purposes of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" of the Settlement Fund will be the Settlement Administrator. The Settlement Administrator will timely and properly prepare, deliver to all necessary parties for signature, and file all necessary documentation for any elections required under Treas. Reg. §1.468B-1. The Settlement Administrator will timely and properly prepare and file any information and other tax returns necessary or advisable with respect to the Settlement Fund and the distributions and payments therefrom including without limitation the returns described in Treas. Reg. §1.468B-2(k), and to the extent applicable Treas. Reg. §1.468B-2(1).

**V. ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS TO PLAINTIFFS**

5.1. Subject to court approval, Class Counsel intend to seek not more than One Million Five Hundred Thousand Dollars (\$1,500,000) in attorneys' fees and costs, and service awards of not more than Five Thousand Dollars (\$5,000) for each of the two Plaintiffs. These amounts will be paid solely from the Settlement Fund. Chase will not oppose Class Counsel's request for attorneys' fees, costs and service awards in the foregoing amounts. The service awards will be in addition to Plaintiffs' entitlement to be paid from the Settlement Fund as set forth in Sections 4.5 through 4.10. Failure by the Court to approve the amount of attorneys' fees, costs or service awards sought by

Class Counsel will not be grounds for Plaintiffs to withdraw from the Settlement, will not delay the Settlement becoming Final as set forth in Section 2.14 above, and will not delay the Effective Date of the releases described in Section 6.1 and 6.2 below. PLAINTIFFS RECOGNIZE AND UNDERSTAND THAT THE COURT MAY NOT APPROVE ANY SERVICE AWARD TO THEM WHATSOEVER AND THAT THEIR SUPPORT OF THE SETTLEMENT IS IN NO WAY CONTINGENT ON ANY SERVICE AWARD. PLAINTIFFS REPRESENT AND WARRANT THAT NO PROMISES OF ANY KIND HAVE BEEN MADE TO THEM WITH RESPECT TO ANY SERVICE AWARD OR OTHERWISE.

**VI. RELEASE AND DISMISSAL**

6.1. Release. As of the Effective Date, Plaintiffs and each Settlement Class Member, their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns and all persons acting for or on their behalf, will be deemed to have fully, finally and forever released the Released Parties from all Claims, as described in Section 2.10 above. Without limiting the foregoing, the Claims released pursuant to this Settlement specifically extend to Claims that Settlement Class Members do not know or suspect to exist in their favor as of or prior to the Effective Date.

6.2. The Parties, and all Settlement Class Members, agree that Section 6.1 constitutes a waiver of Section 1542 of the California Civil Code and any similar or comparable provisions, rights and benefits conferred by the law of any state or territory of the United States or any jurisdiction, and any principle of common law. Section 1542 of the California Civil Code provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR.



Plaintiffs and each Settlement Class Member understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs and each Settlement Class Member acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement, but that they release fully, finally and forever all Claims, and in furtherance of such intention, the release will remain in effect notwithstanding the discovery or existence of any such additional or different facts. The Parties acknowledge (and all Settlement Class Members by operation of law will be deemed to have acknowledged) that the release of unknown Claims as set forth herein was separately bargained for and was a key element of the Settlement.

6.3. Dismissal. Upon entry of the Final Approval Order, Plaintiffs will take all actions necessary to dismiss the Lawsuit with prejudice.

6.4. No Other Actions. Plaintiffs represent and warrant that they have no other actions currently pending or planned against Chase arising from or involving the same or similar facts or allegations that are alleged in the Lawsuit.

6.5. Obligations Of Settlement Class Members Unaffected By Settlement. The Settlement and this Agreement will not affect debts owed by Plaintiffs or Settlement Class Members to Chase, and Plaintiffs and all Settlement Class Members will remain fully obligated on any and all such debts.

6.6. Circuit City Bankruptcy Proceeding. Chase has outstanding claims in the Circuit City Bankruptcy. Among the outstanding claims is bankruptcy claim No. 7065, which seeks defense and indemnification of Chase by Circuit City for the Lawsuit and the Claims settled herein. Any amounts which Chase may recover in the Circuit City Bankruptcy, through settlement or otherwise, will belong solely to Chase, and Plaintiffs and Settlement Class Members will not seek,

through litigation or otherwise, to claim any recovery or portion thereof. Nothing in this Agreement constitutes or will be deemed a waiver of any of Chase's rights in the Circuit City Bankruptcy, including, without limitation, with respect to bankruptcy claim No. 7065.

6.7. No Malicious Prosecution Claim. Chase agrees to fully release Plaintiffs, any member of the Settlement Class, and Plaintiffs' Counsel for any claims Chase may have for malicious prosecution, abuse of process, or any other claim based on the filing, prosecuting and/or maintaining of the Lawsuit or any papers contained in the Lawsuit, and Chase agrees that it will not commence any lawsuit against Plaintiffs, any member of the Class, or Plaintiffs' Counsel contending that this lawsuit should not have been filed, prosecuted and/or maintained.

## **VII. NOTICE AND SETTLEMENT ADMINISTRATION**

7.1. Costs Of Notice And Administration. The costs of notice and administration will be paid or deducted from the Settlement Fund as described in Section 4.4 above. Class Counsel and Chase must approve the costs for notice and administration before any costs are incurred.

7.2. Class Notice. Notice to the Settlement Class will be mailed within sixty (60) days following entry of the Preliminary Approval Order, as follows:

- a. Postcard Notice, substantially in the form attached hereto as Exhibit C and subject to approval by the District Court, will be mailed to all Settlement Class Members, at the most recent address shown in Chase's reasonably accessible electronic records, as maintained in the ordinary course of business, for the account at issue. Addresses will be run once through the NCOA system before mailing.
- b. The Postcard Notice will direct all Settlement Class Members to the Settlement Website.
- c. If, prior to the Final Fairness Hearing, Postcard Notices are returned to the Settlement Administrator with a forwarding address, the Settlement

Administrator will re-send a Postcard Notice to the Settlement Class Member at that forwarding address. If Postcard Notices are returned to the Settlement Administrator as undeliverable, the Settlement Administrator will make a reasonable effort to determine a valid address for the Settlement Class Member, and, if an address is found, then the Settlement Administrator will re-send a Postcard Notice to the Settlement Class Member at that address.

7.3. Settlement Website. The Settlement Administrator will establish, prior to the mailing of the Postcard Notice, the Settlement Website. The Settlement Website will include the Long-Form Notice, substantially in the form attached hereto as Exhibit D and subject to approval by the District Court, this Agreement, contact information for the Settlement Administrator, contact information for Class Counsel, and any other material the Parties agree in writing to include. The Settlement Website URL will be determined by the mutual agreement of the Class Counsel and Chase or, if no agreement can be reached, by the Mediator. The Settlement Website will not include any advertising, and will not bear or include the Chase logo or trademarks. Ownership of the Settlement Website URL will be transferred to Chase within ten (10) days of the date on which operation of the Settlement Website ceases.

7.4. CAFA Notice. All relevant approval and court filing dates will be scheduled to ensure adequate time for compliance with the Class Action Fairness Act. Plaintiffs will cooperate reasonably with Chase to ensure compliance so that the releases described in Section 6.1 and 6.2 above are fully enforceable.

### **VIII. PRELIMINARY APPROVAL**

8.1. Preliminary Approval Order. Plaintiffs will seek the District Court's approval of the Settlement by filing an appropriate Motion for Preliminary Approval and seeking entry of a Preliminary Approval Order substantially in the form attached hereto as Exhibit A. The Parties will cooperate in presenting such papers to the District Court as may be necessary to effectuate the intent

and purposes of this Agreement. Among other things, the proposed Preliminary Approval Order will specifically include the following:

- a. A determination that, for settlement purposes only, the Lawsuit may be maintained as a class action on behalf of the Settlement Class;
- b. A finding that the Notice as described in Section 7.2 above is the only notice to the Settlement Class that is required, and that such Notice satisfies the requirements of Due Process, the Federal Rules of Civil Procedure and any other applicable laws;
- c. A preliminary finding that this Agreement is fair, reasonable, adequate and within the range of possible approval;
- d. A preliminary finding that Plaintiffs fairly and adequately represent the interests of the Settlement Class;
- e. A preliminary appointment of Class Counsel finding that Class Counsel are adequate to act as counsel for the Settlement Class;
- f. A scheduled date for the Final Fairness Hearing, which the Parties will request be approximately one hundred and thirty-five (135) days after entry of the Preliminary Approval Order, to determine whether there exists any reasonable basis why the Settlement should not be approved as being fair, reasonable and adequate, in the best interests of the Settlement Class, and why Judgment should not be entered thereon;
- g. Establishment of a procedure for Settlement Class Members to opt-out of the proposed Settlement and setting a postmark deadline of one hundred and five (105) days following entry of the Preliminary Approval Order, after which no Settlement Class Member will be allowed to opt-out of the Settlement Class;

- h. Establishment of a procedure for Settlement Class Members to object to the proposed Settlement and setting a postmark deadline of one hundred and five (105) days following entry of the Preliminary Approval Order, after which no Settlement Class Member will be allowed to object to the proposed Settlement;
- i. Entry of a preliminary injunction as to Plaintiffs, all Settlement Class Members and any person or entity allegedly acting on behalf of Settlement Class Members, whether directly, representatively or in any other capacity, enjoining them from commencing or prosecuting against the Released Parties, any action or proceeding in any court or tribunal asserting any of the Released Claims; and
- j. Entry of a stay of all proceedings in the Lawsuit except as may be necessary to implement the Settlement or comply with the terms of this Agreement.

8.2. Stay Following Preliminary Approval Order. Upon entry of the Preliminary Approval Order, the Parties will promptly cooperate in filing such papers as may be necessary to obtain a stay of the proceedings in the Lawsuit and any other similar action, except as may be necessary to implement the Settlement or comply with the terms of this Agreement.

8.3. Denial Of Preliminary Approval Order. If the District Court fails for any reason to enter the Preliminary Approval Order substantially in the form attached hereto as Exhibit A, or to certify the Settlement Class for settlement purposes consistent with the provisions hereof, and if the Parties do not agree jointly to either address the reasons given by the District Court and seek further approval again, or to appeal such a ruling, then this Agreement will terminate and be of no further force or effect without any further action by the Parties. In such an event, nothing in this Agreement or filed in connection with seeking entry of the Preliminary Approval Order may be

used or construed as an admission or concession by any of the Parties in the Lawsuit, nor is any Party estopped from challenging any allegations in further proceedings in the Lawsuit.

8.4. Opt-Out/Requests For Exclusion From Settlement.

- a. Requests For Exclusion. Settlement Class Members will be given the opportunity to opt out of the Settlement Class. All requests by Settlement Class Members to be excluded must be in writing, sent to the Settlement Administrator and postmarked not later than one hundred and five (105) days following entry of the Preliminary Approval Order. To be valid, a request for exclusion must be personally signed by the Settlement Class Member and must include: (i) the Settlement Class Member's name, address and telephone number; (ii) the last four digits of the Settlement Class Member's Circuit City Rewards Credit Card account number(s); (iii) a sentence certifying that he or she is a Settlement Class Member; and (iv) the following statement: "I request to be excluded from the class settlement in Davis v. Chase Bank USA, N.A., United States District Court, Central District of California, Case No. CV-04804-DDP-PJW." No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class.
- b. Delivery To Parties; Certification To The District Court. The Settlement Administrator will provide copies of the original requests for exclusion to the Parties by no later than ten (10) days after the opt-out deadline. Not later than ten (10) days before the Final Fairness Hearing, the Settlement Administrator will file with the District Court a declaration verifying that

Notice has been provided to the Settlement Class as set forth in the Preliminary Approval Order and listing all of the valid opt-outs received.

- c. Effect. Settlement Class Members who timely exclude themselves from the Settlement Class will not be eligible to receive any payment pursuant to the Settlement, will not be bound by any further orders or judgments in the Lawsuit, and will preserve their ability to independently pursue any individual claims for damages they may have against Chase by filing their own individual lawsuit or arbitration at their own expense. In the event of ambiguity as to whether a Settlement Class Member has requested to be excluded (such as through a submission of both a request for exclusion and a Claim or a request for a Direct Payment, or by negotiating a Direct Payment), the Settlement Class Member will be deemed not to have requested exclusion.
- d. Right To Withdraw For Excessive Opt-Outs. If more than one thousand (1,000) Settlement Class Members request exclusion, then Chase in its sole discretion may terminate this Agreement, and the Parties will be returned to the status quo ante as of October 22, 2013, for all litigation purposes, as if no settlement had been negotiated or entered into, and the provisions of Section 10.1 below will apply, including without limitation with respect to the Settlement Fund. If Chase exercises this right to declare the Agreement void, it must provide Plaintiffs' Counsel with written notice of this election no later than ten (10) days before the Final Fairness Hearing.

8.5. Objections To Settlement.

- a. Right To Object. Any Settlement Class Member who has not requested exclusion in accordance with the terms of this Agreement, may file an

objection to the Settlement and appear at the Final Fairness Hearing to argue that the proposed Settlement should not be approved and/or to oppose the application of Class Counsel for an award of attorneys' fees and costs and the service awards to Plaintiffs.

- b. Deadline. Any such objection must be filed with the Clerk of the United States District Court, Central District of California, 312 North Spring Street, Los Angeles, California 90012, not later than one hundred and five (105) days following entry of the Preliminary Approval Order. Copies of all objections also must be served electronically via the Court's ECF system or mailed, postmarked no later than one hundred and five (105) days following entry of the Preliminary Approval Order, to each of the following: Class Counsel, Drew Pomerance, Roxborough, Pomerance, Nye & Adreani, LLP, 5820 Canoga Avenue, Woodland Hills CA 91367-6549; and Counsel for Chase, Julia B. Strickland and Stephen J. Newman, Stroock & Stroock & Lavan LLP, 2029 Century Park East, 16th Floor, Los Angeles, California 90067.
- c. Content Of Objections. All objections must include: (i) the objector's name, address and telephone number; (ii) the last four digits of the objector's Circuit City Rewards Credit Card account number(s); (iii) a sentence certifying he or she is a Settlement Class Member; (iv) the factual basis and legal grounds for the objection to the Settlement; (v) the identity of witnesses whom the objector may call to testify at the Final Fairness Hearing; (vi) copies of exhibits the objector may seek to offer into evidence at the Final Fairness Hearing; (vii) a sentence certifying that the objector has not



been promised anything in return for objecting; and (viii) the personal signature of the objector.

**IX. FINAL APPROVAL OF SETTLEMENT AND OTHER CONDITIONS**

9.1. Final Fairness Hearing. On a date to be set by the District Court, Plaintiffs will seek from the District Court the Final Approval Order and Judgment in the Lawsuit, substantially in the forms attached hereto as Exhibits B and E. Among other things, the Final Approval Order will provide:

- a. That the Amended Complaint is filed and that no response to it needs to be filed;
- b. That the Lawsuit, for purposes of the Settlement, may be maintained as a class action on behalf of the Settlement Class;
- c. That Plaintiffs fairly and adequately represent the interests of the Settlement Class;
- d. That Class Counsel adequately represent Plaintiffs and the Settlement Class;
- e. That the Notice satisfied the requirements of Due Process, the Federal Rules of Civil Procedure and any other applicable laws;
- f. That the Settlement is fair, reasonable and adequate to the Settlement Class and that each Settlement Class Member will be bound by the Settlement, including the Releases contained in Section 6.1 above;
- g. That the Settlement represents a fair resolution of all claims asserted on behalf of the Settlement Class and fully and finally resolves all such claims;
- h. That this Agreement should be, and is, approved;
- i. The amount of attorneys' fees and costs and service awards that may be paid to Class Counsel and Plaintiffs from the Settlement Fund;
- j. That the requests for exclusion from the Settlement are confirmed;

- k. That all objections are overruled;
- l. That all claims in the Lawsuit and in the Amended Complaint are dismissed, on the merits and with prejudice, and that each and every Settlement Class Member (except those who have validly excluded themselves from the Settlement Class) is permanently enjoined from bringing, joining or continuing to prosecute against the Released Parties any Released Claims, and entering Judgment thereon; and
- m. That the District Court retains jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of this Agreement and the Settlement.

#### **X. TERMINATION OF AGREEMENT**

10.1. Non-Approval Of Agreement. This Agreement is conditioned upon final approval without material modification by the District Court in the Lawsuit. In the event that the Agreement is not so approved, the Parties will return to the status quo ante as of October 22, 2013, as if no Agreement had been negotiated or entered into. Moreover, the Parties will be deemed to have preserved all of their rights or defenses as of October 22, 2013, and will not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement Class. Likewise, in the event that the Agreement is approved without material modification by the District Court, but is later reversed or vacated on appeal, each of the Parties will have the right to withdraw from the Agreement and return to the status quo ante as of October 22, 2013, for all litigation purposes, as if no Agreement had been negotiated or entered into, and will not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement Class. All money within the Settlement Fund, including without limitation any accrued interest, at the time of

non-approval by the District Court (or reversal or vacatur by an appellate court) will be returned to Chase within fifteen (15) days of non-approval (or reversal or vacatur of approval).

#### **XI. MISCELLANEOUS PROVISIONS**

11.1. Further Assurances. Each of the Parties will execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

11.2. Dispute Resolution. The Parties agree to meet and confer in good faith in regard to any dispute relating to the Settlement or to administration of the Settlement, including without limitation disputes regarding eligibility for payments. Any dispute that cannot be resolved by the Parties will be submitted to the Mediator for a written recommendation. If the Mediator's recommendation does not resolve the dispute, either Party may seek appropriate relief from the District Court, and in ruling on the dispute the District Court may consider but will not be bound by the Mediator's recommendation.

11.3. Publicity And Non-Disparagement. The Parties will refrain from publicly disparaging each other or taking any action designed to harm the public perception of each other regarding any issue related to the Settlement or the Lawsuit. The Parties and counsel further agree not to issue press releases or otherwise initiate communications with the media regarding this Settlement or the Lawsuit.

11.4. Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties with respect to settlement of the Lawsuit. This Agreement supersedes all prior negotiations and agreements, including without limitation all offers and communications made during the course of mediation. THE PARTIES, AND EACH OF THEM, REPRESENT AND WARRANT THAT NO OTHER PARTY OR ANY AGENT OR ATTORNEY OF ANY OF THE PARTIES HAS MADE ANY PROMISE, REPRESENTATION OR WARRANTY WHATSOEVER NOT CONTAINED IN THIS AGREEMENT TO INDUCE THEM TO EXECUTE THE SAME. THE PARTIES, AND EACH OF THEM, FURTHER REPRESENT

AND WARRANT THAT THEY HAVE NOT EXECUTED THIS AGREEMENT IN RELIANCE ON ANY PROMISE, REPRESENTATION OR WARRANTY NOT CONTAINED IN THIS AGREEMENT.

11.5. Confidentiality. Any and all drafts of this Agreement and other settlement documents relating to the negotiations between the Parties will remain confidential and will not be disclosed or duplicated except as necessary to obtain preliminary and/or final court approval. This provision will not prohibit the Parties from submitting this Agreement to the District Court in order to obtain preliminary and/or final approval of the Settlement. It is agreed that, within thirty (30) days after the Effective Date, the originals and all copies of all confidential or highly confidential documents and/or information subject to the protective order in the Lawsuit must be destroyed or returned to the designating Parties.

11.6. Inadmissibility Of Discovery Provided In Connection With Settlement. If approval of the Settlement is denied, all discovery provided in connection with settlement negotiations, including without limitation the post-mediation confirmatory discovery, will be subject to Rule 408 of the Federal Rules of Evidence and will not be admissible for any litigation purpose.

11.7. Successors And Assigns. The Agreement is binding upon, and inures to the benefit of, the heirs, successors and assigns of the Parties.

11.8. Competency Of Parties. The Parties, and each of them, acknowledge, warrant, represent and agree that in executing and delivering this Agreement, they do so freely, knowingly and voluntarily, that they had an opportunity to and did discuss its terms and their implications with legal counsel, that they are fully aware of the contents and effect of the Agreement and that such execution and delivery is not the result of any fraud, duress, mistake or undue influence whatsoever.

11.9. Authority. The person signing this Agreement on behalf of Chase warrants and represents that he or she is authorized to sign on Chase's behalf. Plaintiffs have personally signed this Agreement.

11.10. Modification. No modification of or amendment to this Agreement will be valid unless it is in writing and signed by all Parties hereto.

11.11. Construction. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same will not be construed against any of the Parties. Before declaring any provision of this Agreement invalid, the District Court will first attempt to construe the provision valid to the fullest extent possible consistent with applicable precedent so as to find all provisions of this Agreement valid and enforceable. After applying this rule of construction and still finding a provision invalid, the District Court will interpret the invalid provision to the fullest extent possible to otherwise enforce the invalid provision. The invalidity of any one provision will not render this Agreement otherwise invalid and unenforceable unless the provision found to be invalid materially affects the terms of this Agreement after application of the rules of construction set forth in this paragraph.

11.12. No Waiver. The failure of any of the Parties to enforce at any time any provision of this Agreement will not be construed to be a waiver of such provision, or any other provision, nor in any way to affect the validity of this Agreement or any part hereof, or the right of any of the Parties thereafter to enforce that provision or each and every other provision. No waiver of any breach of this Agreement will constitute or be deemed a waiver of any other breach.

11.13. Notices/Communications. All requests, demands, claims and other communications hereunder will: (a) be in writing; (b) be delivered by U.S. Mail and email; (c) be deemed to have been duly given on the date received; and (d) be addressed to the intended recipient as set forth below:

If to Plaintiffs or the Settlement Class:

Drew Pomerance, Esq.  
Roxborough, Pomerance, Nye & Adreani, LLP  
5820 Canoga Avenue  
Woodland Hills CA 91367-6549  
Email: [dep@rpnalaw.com](mailto:dep@rpnalaw.com)

Jeff Westerman, Esq.  
Westerman Law Corp.  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Email: [jwesterman@jswlegal.com](mailto:jwesterman@jswlegal.com)

Nicole Duckett Fricke, Esq.  
Milberg LLP  
300 South Grand Avenue, Suite 3900  
Los Angeles, CA 90071  
Email: [ndfricke@milberg.com](mailto:ndfricke@milberg.com)

If to Chase:

Julia B. Strickland, Esq.  
Stephen J. Newman, Esq.  
Stroock & Stroock & Lavan LLP  
2029 Century Park East, 16th Floor  
Los Angeles, CA 90067  
Email: [jstrickland@stroock.com](mailto:jstrickland@stroock.com); [snewman@stroock.com](mailto:snewman@stroock.com)

Each of the Parties may change the address to which requests, demands, claims or other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth herein.

11.14. Counting Of Days. Except where stated otherwise, reference to “days” means calendar days. If the last day upon which an act must or may be done falls on a weekend, holiday or other non-business day, such act must or may be done on the next subsequent business day.

11.15. Counterparts. This Agreement may be executed in one or more counterparts and, if so executed, the various counterparts constitute one instrument for all purposes and will be binding on each of the Parties that executed it, provided, however, that none of the Parties will be bound unless and until all Parties have executed this Agreement. For convenience, the several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

Agreed and accepted:

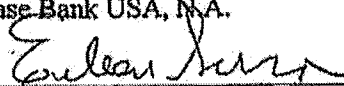
Dated: April \_\_, 2014

By: \_\_\_\_\_  
Gary J. Davis

Dated: April \_\_, 2014

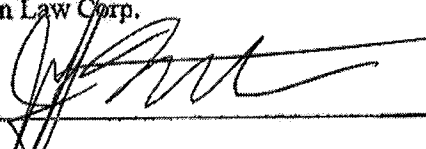
By: \_\_\_\_\_  
Gene Castillo

Dated: April \_\_, 2014

Chase Bank USA, N.A.  
By:  \_\_\_\_\_  
Eileen Serra

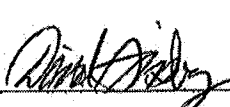
Approved as to form and content:

Dated: April 23, 2014

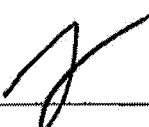
Westerman Law Corp.  
By:  \_\_\_\_\_  
Attorneys for Plaintiffs and the Settlement Class

Dated: April 23, 2014

ROXBOROUGH, POMERANCE, NYE &  
ADREANI, LLP

By:  \_\_\_\_\_  
Attorneys for Plaintiffs and the Settlement Class

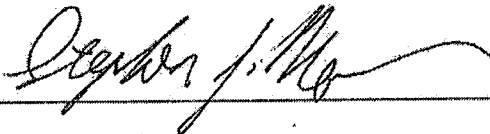
Dated: April \_\_, 2014  
June 9,

Milberg LLP  
By:  \_\_\_\_\_  
Attorneys for Plaintiffs and the Settlement Class

Approved as to form:

Dated: April 14, 2014

STROOCK & STROOCK & LAVAN LLP

By  \_\_\_\_\_

Attorneys for Chase




Agreed and accepted:

Dated: April \_\_, 2014

By: \_\_\_\_\_  
Gary J. Davis

Dated: April 23, 2014

By:  \_\_\_\_\_  
Gene Castillo

Dated: April \_\_, 2014

Chase Bank USA, N.A.

By: \_\_\_\_\_

Approved as to form and content:

Dated: April \_\_, 2014

Westerman Law Corp.

By: \_\_\_\_\_

Attorneys for Plaintiffs and the Settlement Class

Dated: April \_\_, 2014

ROXBOROUGH, POMERANCE, NYE &  
ADREANI, LLP

By: \_\_\_\_\_

Attorneys for Plaintiffs and the Settlement Class

Dated: ~~April~~ \_\_, 2014  
June 9,

Milberg LLP

By:  \_\_\_\_\_

Attorneys for Plaintiffs and the Settlement Class

## **EXHIBIT A**

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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GARY DAVIS, an individual, on behalf  
of himself, as Private Attorney General,  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

CHASE BANK U.S.A., N.A., a  
Delaware corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No. CV 06-04804 DDP (PJWx)

Assigned to the Hon. Dean D. Pregerson

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER**

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

1 WHEREAS, Plaintiffs have made a motion (the "Motion"), pursuant to  
2 Federal Rule of Civil Procedure 23, for an order preliminarily approving settlement  
3 of the above-captioned action (the "Lawsuit") in accordance with the Stipulation and  
4 Agreement of Settlement filed with this Court on \_\_\_\_\_, 2014 (the "Agreement" or  
5 the "Settlement"), and the exhibits attached thereto, entered into by and between  
6 Plaintiffs and Chase, setting forth the terms and conditions for a proposed settlement  
7 of the Lawsuit and its dismissal with prejudice; and

8 WHEREAS, Chase does not oppose Plaintiffs' Motion; and

9 WHEREAS, as a condition of the Agreement, Plaintiffs, on behalf of  
10 themselves individually and on behalf of each of the Settlement Class Members,  
11 have agreed to release all claims arising under federal, state or common law as  
12 specified in Sections 6.1 and 6.2 of the Agreement; and

13 WHEREAS, this Court having read and considered Plaintiffs' Motion, the  
14 Agreement and exhibits attached thereto, as well as all arguments and submissions  
15 from the Parties and any intervenors at the noticed hearings; and

16 WHEREAS, all defined terms have the same meaning as set forth in the  
17 Agreement.

18 NOW, THEREFORE, IT IS HEREBY ORDERED:

19 1. For purposes of this Lawsuit, this Court has subject matter jurisdiction  
20 and, for purposes of the Settlement only, this Court has personal jurisdiction over the  
21 Parties, including all Settlement Class Members.

22 2. For purposes of this Settlement only, this Court preliminarily certifies  
23 the following Settlement Class:

24 All Chase Circuit City Rewards Credit Cardmembers with  
25 California billing addresses who, between May 26, 2004  
26 and the entry of this Preliminary Approval Order  
27 (inclusive), made a promotional or deferred-interest  
28 purchase at Circuit City and who, as a result of payments or  
credits being allocated to a regular purchase balance after  
the promotional or deferred-interest balance, paid more in  
finance charges than they would have paid if the payments  
or credits had first been applied to the regular purchase  
balance.

1 The Settlement Class preliminarily is certified pursuant to Federal Rule of  
2 Civil Procedure 23(b)(3), and all Settlement Class Members will have the right to  
3 exclude themselves by way of the opt-out procedure set forth below in Paragraph 12.

4 3. This Court preliminarily finds, solely for purposes of the Settlement,  
5 that the Lawsuit may be maintained as a class action on behalf of the Settlement  
6 Class because: (a) the Settlement Class is so numerous that joinder of all Settlement  
7 Class Members in the Lawsuit is impracticable; (b) there are questions of law and  
8 fact common to Settlement Class Members that predominate over any individual  
9 questions; (c) Plaintiffs' claims are typical of the claims of the Settlement Class;  
10 (d) Plaintiffs and Class Counsel have fairly and adequately represented and protected  
11 the interests of the Settlement Class; and (e) a class action is superior to other  
12 available methods for the fair and efficient adjudication of the controversy.

13 4. This Court preliminarily approves the Agreement as being fair,  
14 reasonable and adequate and within the range of possible approval, subject to further  
15 consideration at the Final Fairness Hearing as set forth below in Paragraph 7.

16 5. This Court preliminarily finds that Plaintiffs fairly and adequately  
17 represent the interests of the Settlement Class and therefore designates Plaintiffs as  
18 the representatives of the Settlement Class.

19 6. Pursuant to Federal Rule of Civil Procedure 23(g), and after  
20 consideration of the factors described therein and oral and written arguments, this  
21 Court designates as Class Counsel the law firms of Westerman Law Corp.,  
22 Roxborough, Pomerance, Nye & Adreani, LLP and Milberg LLP. This Court  
23 preliminarily finds that based on the work Class Counsel have done in identifying,  
24 investigating and prosecuting the claims in the action, Class Counsel's experience in  
25 handling class actions, other complex litigation and claims of the type asserted in this  
26 Lawsuit, Class Counsel's knowledge of the applicable law and the resources Class  
27 Counsel have and will commit to representing the class, Class Counsel have and will  
28 fairly and adequately represent the interests of the Settlement Class. Plaintiffs and

1 Class Counsel, on behalf of the Settlement Class, are authorized to take all  
2 appropriate action required or permitted to be taken by the Settlement Class pursuant  
3 to the Agreement to effectuate its terms.

4 7. The Final Fairness Hearing will take place before the Honorable Dean  
5 D. Pregerson on \_\_\_\_\_, 2014 [**a date on or after one hundred and thirty-five**  
6 **(135) days following entry of this Order]** at \_\_\_\_\_ a.m./p.m. at the United States  
7 District Court, Central District of California, Courtroom #3, 312 Spring Street, Los  
8 Angeles, California 90012, to determine: whether the proposed Settlement of the  
9 Lawsuit on the terms and conditions provided for in the Agreement is fair, adequate  
10 and reasonable as to the Settlement Class Members and should be approved; whether  
11 the Judgment, as provided for in the Agreement, should be entered; and whether the  
12 amount of fees and costs that should be awarded to Class Counsel, and the amount of  
13 the service awards that should be awarded to Plaintiffs, as provided for in the  
14 Agreement. The Court will also hear and consider any properly lodged objections at  
15 that time.

16 8. This Court approves Gilardi & Co. LLC as the Settlement  
17 Administrator. The Settlement Administrator is directed to implement the notice  
18 program set forth in Sections 7.2 and 7.3 of the Agreement.

19 9. This civil action was commenced after February 18, 2005. To the extent  
20 it has not already done so, the Court directs Chase to notify the appropriate Federal  
21 and State officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715,  
22 and, at or before the Final Fairness Hearing, file proof that such notice has been  
23 given.

24 10. This Court finds that notice as set forth in Sections 7.2 and 7.3 of the  
25 Agreement are the only notice required, and that such notice satisfies the  
26 requirements of due process, the Federal Rules of Civil Procedure, the Class Action  
27 Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable laws, and  
28 constitutes the best notice practicable under the circumstances and will constitute due

1 and sufficient notice to all persons entitled thereto. This Court approves the form  
2 and content of the Postcard Notice and Long-form Notice attached as Exhibits C and  
3 D to the Agreement.

4 11. All Settlement Class Members who do not request exclusion ("opt-out")  
5 from the Settlement Class certified pursuant to Federal Rule of Civil Procedure  
6 23(b)(3), pursuant to the procedure set forth in Paragraph 12 below, will be bound by  
7 all determinations and judgments in this Lawsuit concerning the Settlement,  
8 including, but not limited to, the validity, binding nature and effectiveness of the  
9 releases set forth in Sections 6.1 and 6.2 of the Agreement.

10 12. Any Settlement Class Member who wishes to opt-out of the Settlement  
11 Class will submit to the Settlement Administrator an appropriate written request for  
12 exclusion by mail, postmarked no later than one hundred and five (105) days after  
13 entry of this Order. The request for exclusion must be personally signed by the  
14 Settlement Class Member, and include: (i) the Settlement Class Member's name,  
15 address, telephone number; (ii) the last four digits of the Settlement Class Member's  
16 Chase credit card account number(s); (iii) a sentence certifying that he or she is a  
17 Settlement Class Member; and (iv) the following statement: "I request to be excluded  
18 from the class settlement in Davis v. Chase Bank USA, N.A., United States District  
19 Court, Central District of California, Case No. 2:06-CV-04804-DDP-PJW." No  
20 Settlement Class Member, or any person acting on behalf of or in concert or  
21 participation with a Settlement Class Member, may exclude any other Settlement  
22 Class Member from the Settlement Class.

23 13. Any Settlement Class Member, who has not previously opted-out in  
24 accordance with the terms of Paragraph 12 above, may appear at the Final Fairness  
25 Hearing to argue that the proposed Settlement should not be approved and/or to  
26 oppose the application of Class Counsel for an award of attorneys' fees and costs and  
27 the service awards to Plaintiffs; provided, however, that no Settlement Class Member  
28 will be heard, and no objection may be considered, unless the Settlement Class

1 Member files with this Court a written statement of the objection postmarked no later  
2 than one hundred and five (105) days following entry of this Order. Copies of all  
3 objection papers also must be served electronically via the Court's ECF system or  
4 mailed, postmarked no later than one hundred and five (105) days following entry of  
5 this Preliminary Approval Order, to each of the following: Class Counsel, Drew  
6 Pomerance, Esq., Roxborough, Pomerance, Nye & Adreani, LLP, 5820 Canoga  
7 Avenue, Woodland Hills CA 91367-6549; and counsel for Chase, Julia B. Strickland,  
8 Esq. and Stephen J. Newman, Esq., Stroock & Stroock & Lavan LLP, 2029 Century  
9 Park East, 16th Floor, Los Angeles, California 90067. All objections must include:  
10 (i) the objector's name, address and telephone number; (ii) the last four digits of the  
11 objector's Circuit City Rewards Credit Card account number(s); (iii) a sentence  
12 certifying he or she is a Settlement Class Member; (iv) the factual basis and legal  
13 grounds for the objection to the Settlement; (v) the identity of witnesses whom the  
14 objector may call to testify at the Final Fairness Hearing; (vi) copies of exhibits the  
15 objector may seek to offer into evidence at the Final Fairness Hearing; (vii) a  
16 sentence certifying that the objector has not been promised anything in return for  
17 objecting; and (viii) the personal signature of the objector.

18 14. Class Counsel will submit their papers in support of final approval of  
19 the Settlement and their application for attorneys' fees and reimbursement of  
20 expenses by no later than twenty (20) days before the objection deadline set by  
21 Paragraph 13 above.

22 15. Class Counsel will submit their papers in response to any objections by  
23 no later than seven (7) days before the Final Fairness Hearing.

24 16. The costs of notice and settlement administration shall be paid as  
25 described in Section 4 of the Agreement.

26 17. All proceedings in this Lawsuit are stayed pending final approval of the  
27 Settlement, except as may be necessary to implement the Settlement or comply with  
28 the terms of the Agreement.



1 18. Pending final determination of whether the Settlement should be  
2 approved, Plaintiffs, all Settlement Class Members and any person or entity allegedly  
3 acting on behalf of Settlement Class Members, either directly, representatively or in  
4 any other capacity, are preliminarily enjoined from commencing or prosecuting  
5 against the Released Parties any action or proceeding in any court or tribunal  
6 asserting any of the Released Claims, provided, however, that this injunction will not  
7 apply to individual claims of any Settlement Class Members who timely exclude  
8 themselves in a manner that complies with Paragraph 12 above. This injunction is  
9 necessary to protect and effectuate the Settlement, this Order, and this Court's  
10 flexibility and authority to effectuate this Settlement and to enter judgment when  
11 appropriate, and is ordered in aid of this Court's jurisdiction and to protect its  
12 judgments pursuant to 28 U.S.C. section 1651(a).

13 19. This Court reserves the right to adjourn or continue the date of the Final  
14 Fairness Hearing without further notice to Settlement Class Members, and retains  
15 jurisdiction to consider all further applications arising out of or connected with the  
16 Settlement. This Court may approve or modify the Settlement without further notice  
17 to Settlement Class Members.

18 IT IS SO ORDERED.

19 Dated: \_\_\_\_\_

20 DEAN D. PREGERSON  
21 United States District Court Judge  
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## **EXHIBIT B**

Case 2:06-cv-04804-DDP-PJW Document 332-1 Filed 04/23/14 Page 48 of 78 Page ID  
#:7280

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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 GARY DAVIS, an individual, on behalf  
11 of himself, as Private Attorney General,  
12 and on behalf of all others similarly  
situated,

13 Plaintiff,

14 v.

15 CHASE BANK U.S.A., N.A., a  
16 Delaware corporation; and DOES 1  
through 50, inclusive,

17 Defendants.  
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Case No. CV 06-04804 DDP (PJWx)

Assigned to the Hon. Dean D. Pregerson

**[PROPOSED] FINAL APPROVAL  
ORDER**

**[PROPOSED] FINAL APPROVAL ORDER**

1 Plaintiffs, on their own behalf and on behalf of all similarly situated  
2 consumers, submitted to the District Court a Motion for Final Approval of the Class  
3 Action Settlement ("Motion") seeking final approval of the Stipulation and  
4 Agreement of Settlement (the "Agreement" or the "Settlement"), and the exhibits  
5 attached thereto, entered into by and between Plaintiffs and Chase. Chase does not  
6 oppose Plaintiffs' Motion.

7 By Order dated \_\_\_\_\_, 2014, the District Court entered an Order that  
8 preliminarily approved the Agreement and conditionally certified the Settlement  
9 Class for settlement purposes only (the "Preliminary Approval Order"). Due and  
10 adequate notice having been given to the Settlement Class in compliance with the  
11 procedures set forth in the Agreement and the Preliminary Approval Order, this  
12 Court having considered all papers filed and proceedings had herein, and otherwise  
13 being fully informed of the premises and good cause appearing therefore, IT IS  
14 HEREBY ORDERED, ADJUDGED, AND DECREED:

15 1. This Final Approval Order incorporates by reference the definitions in  
16 the Agreement, and all terms used herein will have the same meanings as set forth in  
17 the Agreement.

18 2. This Court has jurisdiction over the subject matter of the above-  
19 captioned action (the "Lawsuit") and, for purposes of this Settlement only, personal  
20 jurisdiction over the Parties and all Settlement Class Members.

21 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and  
22 consistent with due process, this Court hereby approves the Agreement and finds that  
23 the settlement consideration is fair and that said Settlement is, in all respects, fair,  
24 reasonable and adequate to the Settlement Class Members, and the Parties are hereby  
25 directed to consummate the Settlement in accordance with the terms and provisions  
26 of the Agreement.

27 4. Pursuant to Federal Rule of Civil Procedure 23(b)(3), this Court hereby  
28 certifies the Settlement Class solely for purposes of effectuating this Settlement.

1 a. The Settlement Class is defined as follows:

2 All Chase Circuit City Rewards Credit Cardmembers with  
3 California billing addresses who, between May 26, 2004  
4 and [date] (inclusive), made a promotional or deferred-  
5 interest purchase at Circuit City and who, as a result of  
6 payments or credits being allocated to a regular purchase  
7 balance after the promotional or deferred-interest balance,  
8 paid more in finance charges than they would have paid if  
9 the payments or credits had first been applied to the regular  
10 purchase balance.

11 b. Settlement Class Members had the right to exclude themselves by  
12 way of the opt-out procedure set forth in the Preliminary Approval Order. Excluded  
13 from the Settlement Class are those persons who validly and timely requested  
14 exclusion from the Settlement Class by way of the opt-out procedure, as identified in  
15 Exhibit 1 hereto (the "Opt-Outs").

16 5. For purposes of this Settlement only, this Court finds and concludes  
17 that: (a) the Settlement Class Members are so numerous that joinder of all  
18 Settlement Class Members is impracticable; (b) there are questions of law and fact  
19 common to the Settlement Class which predominate over any individual questions;  
20 (c) Plaintiffs' claims are typical of the claims of the Settlement Class; (d) Plaintiffs  
21 and Class Counsel have fairly and adequately represented and protected the interests  
22 of all of the Settlement Class Members; and (e) a class action is superior to other  
23 available methods for the fair and efficient adjudication of the controversy,  
24 considering: (i) the interests of the Settlement Class Members in individually  
25 controlling the prosecution of separate actions; (ii) the desirability or undesirability  
26 of continuing the litigation of these claims in this particular forum; and (iii) the  
27 difficulties likely to be encountered in the management of this class action.

28 6. This Court finds that the notice provided to Settlement Class Members  
was the best notice practicable and fully satisfied the requirements of due process,  
the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28  
U.S.C. § 1715, and any other applicable laws, and constituted the best notice  
practicable under the circumstances and constituted due and sufficient notice to all

1 persons entitled thereto. Class Counsel has filed with the Court proof that notice was  
2 provided to Settlement Class Members in compliance with the procedures set forth in  
3 the Agreement and the Preliminary Approval Order. Chase's counsel has filed with  
4 the Court proof of compliance with the Class Action Fairness Act of 2005.

5 7. This Court has considered and hereby overrules all objections to the  
6 Settlement on their merits.

7 8. This Court hereby dismisses with prejudice on the merits and without  
8 costs (except as otherwise provided in the Agreement) the above-captioned action  
9 (subject to retention of jurisdiction to enforce the Settlement).

10 9. By operation of this Final Approval Order and upon the occurrence of  
11 the Effective Date, Plaintiffs and each Settlement Class Member, their respective  
12 heirs, executors, administrators, representatives, agents, attorneys, partners,  
13 successors, predecessors-in-interest, assigns and all persons acting for or on their  
14 behalf, are deemed to have fully, finally and forever released the Released Parties (as  
15 defined below) from all Claims (as defined below).

16 a. "Released Parties" means Chase, together with its predecessors,  
17 successors (including, without limitation, acquirers of all or substantially all of its  
18 assets, stock or other ownership interests) and assigns; the past, present, and future,  
19 direct and indirect, parents (including but not limited to holding companies and  
20 JPMorgan Chase & Co.), subsidiaries and affiliates of any of the above; and the past,  
21 present and future principals, trustees, partners, claims administrators (including,  
22 without limitation, the Settlement Administrator), officers, directors, employees,  
23 agents, attorneys, shareholders, advisors, predecessors, successors, assigns,  
24 representatives, heirs, executors, and administrators of any of the above.

25 b. "Claim" and "Claims" mean any and all actual or potential  
26 claims, actions, causes of action, suits, counterclaims, cross-claims, third party  
27 claims, contentions, allegations, and assertions of wrongdoing, and any demands for  
28 any and all debts, obligations, liabilities, damages (whether actual, compensatory,

1 treble, punitive, exemplary, statutory or otherwise), attorneys' fees, costs, expenses,  
2 restitution, disgorgement, injunctive relief, any other type of equitable, legal or  
3 statutory relief, any other benefits, or any penalties of any type whatsoever, whether  
4 known or unknown, suspected or unsuspected, contingent or non-contingent, or  
5 discovered or undiscovered, whether asserted in federal court, state court, arbitration  
6 or otherwise, and whether triable before a judge or jury or otherwise, including,  
7 without limitation, those that were alleged, or that could have been alleged based on  
8 the same or similar facts and circumstances, in the Lawsuit.

9 c. Without limiting the foregoing, the claims released pursuant to  
10 Paragraph 9b (the "Released Claims") specifically extend to Claims that Settlement  
11 Class Members do not know or suspect to exist in their favor as of or prior to the  
12 Effective Date.

13 10. The Parties, and all Settlement Class Members, agree that the releases in  
14 Paragraph 9 constitute a waiver of Section 1542 of the California Civil Code and any  
15 similar or comparable provisions, rights and benefits conferred by the law of any  
16 state or territory of the United States or any jurisdiction, and any principle of  
17 common law. Section 1542 of the California Civil Code provides:

18 A GENERAL RELEASE DOES NOT EXTEND TO  
19 CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
20 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
21 THE TIME OF EXECUTING THE RELEASE, WHICH  
IF KNOWN BY HIM OR HER MUST HAVE  
MATERIALLY AFFECTED HIS OR HER  
SETTLEMENT WITH THE DEBTOR.

22 Plaintiffs and each Settlement Class Member understand and acknowledge the  
23 significance of these waivers of California Civil Code Section 1542 and/or of any  
24 other applicable law relating to limitations on releases. In connection with such  
25 waivers and relinquishment, Plaintiffs and each Settlement Class Member  
26 acknowledge that they are aware that they may hereafter discover facts in addition to,  
27 or different from, those facts which they now know or believe to be true with respect  
28 to the subject matter of the Settlement, but that they release fully, finally and forever

1 all Claims, and in furtherance of such intention, the releases will remain in effect  
2 notwithstanding the discovery or existence of any such additional or different facts.  
3 The Parties acknowledge (and all Settlement Class Members by operation of law are  
4 deemed to have acknowledged) that the release of unknown Claims as set forth  
5 herein was separately bargained for and was a key element of the Settlement.

6 11. This Final Approval Order, the Preliminary Approval Order, the  
7 Agreement, and any act performed or document executed pursuant to or in  
8 furtherance thereof:

9 a. Will not be offered or received against the Released Parties as  
10 evidence of, or be construed as or deemed to be evidence of, any admission or  
11 concession by the Released Parties as to the truth or relevance of any fact alleged by  
12 Plaintiffs, the existence of any class alleged by Plaintiffs, the propriety of class  
13 certification had the Lawsuit been litigated rather than settled, or the validity of any  
14 claim that has been or could have been asserted in the Amended Complaint or in any  
15 other litigation, or the deficiency of any defense that has been or could have been  
16 asserted to the Amended Complaint or in any other litigation, or of any liability,  
17 negligence, fault, or wrongdoing of the Released Parties;

18 b. Will not be offered as or received against any of the Released  
19 Parties as evidence of, or construed as or deemed to be evidence of, any admission or  
20 concession of any liability, negligence, fault or wrongdoing, or in any way referred  
21 to for any other reason as against any of the parties to the Agreement, in any other  
22 civil, criminal or administrative action or proceeding, other than such proceedings as  
23 may be necessary to effectuate the provisions of the Agreement, except that the  
24 Released Parties may refer to it to effectuate the liability protection granted them  
25 thereunder;

26 c. Will not be deemed an admission by Chase that it is subject to the  
27 jurisdiction of any court;

28



1 d. Will not be construed against Chase as an admission or  
2 concession that the consideration to be given under the Agreement represents the  
3 amount which could be or would have been recovered after trial.

4 12. The Released Parties may file the Agreement and/or this Final Approval  
5 Order in any action that may be brought against them in order to support a defense or  
6 counterclaim based on principles of res judicata, collateral estoppel, release, good  
7 faith settlement, judgment bar, reduction, set-off or any other theory of claim  
8 preclusion or issue preclusion or similar defense or counterclaim.

9 13. Settlement Class Members, and any person or entity allegedly acting on  
10 behalf of Settlement Class Members, either directly, representatively or in any other  
11 capacity, are enjoined from commencing or prosecuting against the Released Parties  
12 any action or proceeding in any court or tribunal asserting any of the Released  
13 Claims, provided, however, that this injunction will not apply to non-released claims  
14 of Opt-Outs.

15 14. The Court finds that the Parties and their counsel have complied with  
16 each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all  
17 proceedings herein.

18 15. Class Counsel are hereby awarded the sum of \$\_\_\_\_\_ in  
19 attorneys' fees and costs, which sum the Court finds to be fair and reasonable, which  
20 will be paid to Class Counsel from the Settlement Fund. The award of attorneys'  
21 fees and costs will be allocated among Class Counsel in a fashion which, in the  
22 opinion of Class Counsel, fairly compensates Class Counsel for their respective  
23 contributions in the prosecution of the Lawsuit.

24 16. Plaintiff Gary Davis is hereby awarded \$\_\_\_\_\_ from the  
25 Settlement Fund. Plaintiff Gene Castillo is hereby awarded \$\_\_\_\_\_  
26 from the Settlement Fund. These service awards are for their time and efforts spent  
27 conferring with and assisting Class Counsel to help further the Lawsuit for the  
28 benefit of the Settlement Class.

1 17. In making the award of attorneys' fees and costs to Class Counsel and  
2 service award to Plaintiffs, the Court has considered and found that:

3 a. The Parties entered into arm's-length discussions regarding  
4 attorneys' fees for Class Counsel, including extensive discussions through and with  
5 the assistance of a third-party mediator, Hon. Edward A. Infante (Ret.);

6 b. The Settlement created a benefit with a substantial value to the  
7 Settlement Class and numerous Settlement Class Members.

8 c. \_\_\_\_\_ copies of the Postcard Notice were disseminated to  
9 putative Settlement Class Members. \_\_\_\_\_ objections were filed against the  
10 terms of the proposed Settlement;

11 d. Class Counsel conducted the Lawsuit and achieved the Settlement  
12 with skill, perseverance and diligent advocacy;

13 e. The Lawsuit involves complex factual and legal issues and was  
14 actively prosecuted over seven years and, in the absence of a settlement, would  
15 involve further lengthy proceedings with uncertain resolution of the complex factual  
16 and legal issues;

17 f. Had Class Counsel not achieved the Settlement there would  
18 remain a significant risk that the Settlement Class may have recovered less or  
19 nothing from the defendant;

20 g. Class Counsel have devoted over \_\_\_\_\_ hours, with a lodestar  
21 value of over \$\_\_\_\_\_ to achieve the Settlement; and

22 h. The amount of attorneys' fees and costs awarded and the amount  
23 of the service award to Plaintiffs are fair and reasonable and consistent with awards  
24 in similar cases.

25 18. Without affecting the finality of this Final Approval Order in any way,  
26 this Court retains continuing jurisdiction of all matters relating to the modification,  
27 interpretation, administration, implementation, effectuation and enforcement of the  
28 Settlement. Class Counsel are to continue in their role to oversee all aspects of the

Case 2:06-cv-04804-DDP-PJW Document 332-1 Filed 04/23/14 Page 56 of 78 Page ID  
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1 Settlement. Upon notice to Class Counsel, Chase may seek from this Court, pursuant  
2 to 28 U.S.C. § 1651(a), such further orders or process as may be necessary to prevent  
3 or forestall the assertion of any of the Released Claims in any other forum, or as may  
4 be necessary to protect and effectuate the Settlement and this Final Approval Order.

5 19. If an appeal, writ proceeding or other challenge is filed as to this Final  
6 Approval Order, and if thereafter the Final Approval Order is not ultimately upheld,  
7 all orders entered, stipulations made and releases delivered in connection herewith,  
8 or in the Agreement or in connection therewith, will be null and void to the extent  
9 provided by and in accordance with the Agreement.

10 20. There is no just reason for delay in the entry of this Final Approval  
11 Order and immediate entry by the Clerk of the Court is expressly directed pursuant to  
12 Rule 54(b) of the Federal Rules of Civil Procedure.

13 IT IS SO ORDERED.  
14

15 Dated: \_\_\_\_\_

DEAN D. PREGERSON  
United States District Court Judge

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## **EXHIBIT C**

[Front]

<p><b>Circuit City Rewards Credit Cardmembers who made promotional or deferred-interest purchases at Circuit City may be entitled to payment under a class action settlement.</b></p> <p><b><i>THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.</i></b></p> <p>This is an official court notice from the United States District Court for the Central District of California</p>	<p>TO</p> <p>[name and address here.]</p>
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[Inside]

You may be entitled to a payment as part of a proposed \$5.5 million cash settlement of a class action if you were or are a Chase or Bank One Circuit City Rewards Credit Cardmember with a California billing address and you made a promotional or deferred-interest purchase at Circuit City between May 26, 2004 and \_\_\_\_\_, 2014 and, as a result of payments or credits being allocated to a regular purchase balance after the promotional or deferred-interest balance, you paid more in finance charges than you would have paid if the payments or credits had first been applied to the regular purchase balance.

The class action lawsuit alleged that Chase, and before it, Bank One, improperly allocated payments or credits on Circuit City Rewards Credit Cards. No court has decided which side was right and Chase and Bank One deny that they did anything wrong. Both sides agreed to the Settlement to resolve the case and provide relief to Settlement Class.

If you wish to remain a part of the Settlement Class and are entitled to a payment, you do not have to do anything, as a check will automatically be mailed to you after the Settlement becomes Final.

If you want to exclude yourself from the Settlement, you must send a written request specifically stating that you request exclusion to \_\_\_\_\_ *Litigation* Settlement Administrator, P.O. Box \_\_\_\_\_, CITY, ST ZIP postmarked no later than \_\_\_\_\_, 2014. If you do not opt out, you will be bound by this Settlement.

If you remain a Settlement Class Member, you may object to the Settlement by writing to the Court and sending copies to counsel no later than \_\_\_\_\_, 2014. Full details on how to object or exclude yourself can be found at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

The Court will hold a hearing at the United States District Court, Central District of California, Courtroom #3, 312 Spring Street, Los Angeles, California 90012 on \_\_\_\_\_, 2014 at 10:00 a.m. to

consider whether to approve the settlement and award attorneys' fees, costs and service awards as requested, in an amount not to exceed \$1,510,000. You or your lawyer may ask to appear and speak at your own expense, but you do not have to. For further and more detailed information about this settlement and your rights, please review the Long-Form Notice available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). Write to \_\_\_\_\_ *Litigation* Settlement Administrator, P.O. Box \_\_\_\_\_, CITY, ST ZIP to request the Long-Form Notice. This Notice is only a summary.

*Davis v. Chase Bank USA, N.A.*  
*United States District Court for the Central District of California, Case No. 2:06-CV-04804-DDP-PJW*

## **EXHIBIT D**

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING TO CHASE CREDIT CARDHOLDERS**

This Notice summarizes your rights under the proposed settlement of a class action lawsuit as described below. You are eligible for payment if you were a Chase or Bank One Circuit City Rewards Credit Cardholder with a California billing address who between May 26, 2004 and \_\_\_\_\_, 2014 made a promotional or deferred-interest purchase at Circuit City and who, as a result of payments or credits being allocated first to the promotional or deferred-interest balance before the regular purchase balance, paid more in finance charges than you would have paid if the payments or credits had first been applied to the regular purchase balance.

### **THIS NOTICE COULD AFFECT YOUR RIGHTS – PLEASE READ IT CAREFULLY**

This Notice is provided to you by order of the United States District Court, Central District of California. This summarizes a proposed settlement of a class action lawsuit titled *Davis v. Chase Bank USA, N.A.*, Case No. 2:06-CV-04804-DDP-PJW (the “Lawsuit”). In the Lawsuit, Gary Davis and Gene Castillo (“Plaintiffs”) allege that Chase Bank USA, N.A., and before it, Bank One, Delaware, N.A. (together, “Chase”), improperly allocated payments or credits on Circuit City Rewards Credit Cards. Plaintiffs make these claims on behalf of all Chase credit card account holders in California who between May 26, 2004 and \_\_\_\_\_, 2014 made a promotional or deferred-interest purchase at Circuit City and who, as a result of payments or credits being allocated first to the promotional or deferred-interest balance, **before the regular purchase balance**, paid more in finance charges than they would have paid if the payments or credits had first been applied to the regular purchase balance. Chase vigorously denies the allegations, and contends that it fully and adequately disclosed the terms of all promotional rate offers and acted in accordance with its contractual authority.

#### **Who is a Settlement Class Member?**

You are a Settlement Class Member if you were or are a Chase or Bank One Circuit City Rewards Credit Cardholder with a California billing address who made a promotional or deferred-interest purchase at Circuit City and who, as a result of payments or credits being allocated first to the promotional or deferred-interest balance, **before the regular purchase balance**, paid more in finance charges than you would have paid if the payments or credits had first been applied to the regular purchase balance between May 26, 2004 and \_\_\_\_\_, 2014.

#### **What are the terms of the proposed Settlement?**

The complete terms of the proposed settlement are set forth in a formal Stipulation and Agreement of Settlement (the “Agreement” or the “Settlement”) which is on file with the Court and is available here [\[hyperlink\]](#). This Notice is only a summary of the Agreement, and in case of any conflict or inconsistency between this Notice and the Agreement, the terms of the Agreement will control. The Agreement, if approved, would resolve all of the claims alleged in the Lawsuit.



The Settlement benefits are summarized below.

### **The Settlement Fund.**

Chase has agreed to pay \$5,500,000 for the benefit of Settlement Class Members. This money will be used: (1) to pay the costs of notice and administering the Settlement; (2) to pay Settlement Class Counsel's attorneys' fees and litigation expenses and to pay service awards to Plaintiffs; (3) to make payments to Settlement Class Members (described below); and (4) to pay any residual balance of the Settlement Fund, if any, to a charitable organization or organizations.

Counsel for Plaintiffs and the Settlement Class will ask the Court to award them up to \$1,500,000 in fees and costs and to award the two Plaintiffs service awards of \$5,000 each (for a total of \$1,510,000 in fees, costs and service awards). The Court will determine the appropriate amount of the awards to be paid from the Settlement Fund. The Settlement is not conditioned upon approval of any of the attorneys' fees, costs or service award amounts. Class Counsel will also file a motion for an award of attorneys' fees no later than twenty (20) days before the deadline to object, as set forth below. A copy of the motion can be obtained from the Settlement Administrator, and will be available on this website when it is filed.

### **Payment to Settlement Class Members.**

If the Settlement is approved by the Court, Settlement Class Members will automatically receive payment, which will be mailed to them by the Settlement Administrator. There is no requirement to submit a claim form or take any further action on your part, but please update the Settlement Administrator, at \_\_\_\_\_, if your address changes.

### **What Happens Next?**

The Court will hold a "Final Fairness Hearing" on \_\_\_\_\_ 2014, at \_\_\_\_\_ at the United States District Court, Central District of California, 312 Spring Street, Courtroom #3, Los Angeles, CA 90012, to hear any objections and to consider whether to give final approval to the Settlement. The Court will only hear objections at the hearing from those who timely object to the Settlement (see below). You may participate in the Final Fairness Hearing with or without an attorney, but if you choose to be represented by an attorney you must do so at your own expense. **YOU DO NOT HAVE TO APPEAR AT THE HEARING TO RECEIVE THE BENEFITS OF THE SETTLEMENT.**

### **What Are Your Options?**

#### **Participate in the Settlement.**

If you wish to remain a part of the Settlement Class and are entitled to a payment, a check will automatically be mailed to you after the Settlement becomes Final. You must negotiate any payments within one hundred eighty (180) days of the date indicated on the check. Based on the size of the Settlement Class and the estimated expenses and fees

paid from the Settlement Fund, each Settlement Class Member likely will receive a check for at least \$8.00.

**Opt Out of the Settlement.**

You may exclude yourself from the Settlement. If you choose to exclude yourself, or "opt out," you must send a written statement to the Settlement Administrator that includes: (1) your full name; (2) your address; (3) the last four digits of your Chase credit card account number(s); (4) a sentence certifying that you are a Settlement Class Member; and (5) the following statement: "I request to be excluded from the class settlement in *Davis v. Chase Bank, USA, N.A.*, United States District Court, Central District of California, Case No. 2:06-CV-04804-DDP-PJW." You must personally sign your written "opt-out" statement and mail it postmarked by \_\_\_\_\_ to the following address:

[Settlement Administrator]

If you do not opt out, you will be bound by this Settlement.

**Object to the Settlement.**

You may remain a Settlement Class Member, but object to the terms of the Settlement. You may object to all or any portion of the Settlement at the Final Fairness Hearing, but you must first explain your objections in writing. All objections must include: (i) your name, address and telephone number; (ii) the last four digits of your Circuit City Rewards Credit Card account number(s); (iii) a sentence certifying you are a Settlement Class Member; (iv) the factual basis and legal grounds for the objection to the Settlement; (v) the identity of witnesses whom you may call to testify at the Final Fairness Hearing; (vi) copies of exhibits you may seek to offer into evidence at the Final Fairness Hearing; (vii) a sentence certifying that you have not been promised anything in return for objecting; and (viii) your personal signature. To be considered, objections must be: (1) mailed to the lawyers handling the case for each side postmarked by \_\_\_\_\_; and (2) filed with the court no later than \_\_\_\_\_. The three addresses are:

**Counsel for Plaintiff:**

Drew Pomerance, Esq.  
Roxborough, Pomerance, Nye &  
Adreani, LLP  
5820 Canoga Avenue  
Woodland Hills CA 91367-6549

**Counsel for Chase:**

Julia B. Strickland, Esq.  
Stephen J. Newman, Esq.  
Stroock & Stroock & Lavan LLP  
2029 Century Park East  
Los Angeles, CA 90067

**The Court:**

Clerk, United States District Court  
Central District of California  
312 Spring Street, Courtroom 3  
Los Angeles, CA 90012

You have the right to consult with your own attorney, at your own expense, before deciding how best to proceed.

**What claims will be released by this Settlement?**

If the Settlement receives final approval from the Court, the Settlement will be legally binding on all Settlement Class Members, including Settlement Class Members who object. This means that, you will be barred from pursuing the claims released by the Settlement unless you validly "opt out" as described above. The full terms of the release, which will bind all Settlement Class Members as to certain claims against Chase and certain affiliates and related entities, are set forth in the Agreement which is on file with the Court and available here [hyperlink]. The Release provides that as of the Effective Date, Plaintiffs and each Settlement Class Member, their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns and all persons acting for or on their behalf, will be deemed to have fully, finally and forever released the Released Parties from all Claims, as described in Section 2.10 of the Agreement. Without limiting the foregoing, the Claims released specifically extend to Claims that Settlement Class Members do not know or suspect to exist in their favor as of or prior to the Effective Date.

The Release constitutes a waiver of Section 1542 of the California Civil Code and any similar or comparable provisions, rights and benefits conferred by the law of any state or territory of the United States or any jurisdiction, and any principle of common law. Section 1542 of the California Civil Code provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
HER SETTLEMENT WITH THE DEBTOR.**

Plaintiffs and each Settlement Class Member are deemed to understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs and each Settlement Class Member are deemed to have acknowledged that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement, but that they release fully, finally and forever all Claims, and in furtherance of such intention, the Release will remain in effect notwithstanding the discovery or existence of any such additional or different facts. The Parties acknowledge (and all Settlement Class Members by operation of law will be deemed to have

acknowledged) that the release of unknown Claims as set forth herein was separately bargained for and was a key element of the Settlement.

In summary, you will release all Claims that were alleged (or that could have been alleged based on the same or similar facts and circumstances, whether known or unknown) in the Lawsuit. **YOU WILL NOT BE PERMITTED TO FILE OR CONTINUE ANY LAWSUIT CHALLENGING ALLOCATION OF PAYMENTS ON CIRCUIT CITY REWARDS CREDIT CARD ACCOUNT BALANCES.**

**More Information Is Available.**

This Notice is only a summary of the Settlement, which is embodied by the terms of the Agreement. If you have questions regarding the Settlement, contact the Settlement Administrator at:

[address/phone/email]

You may also review the Court's file during regular court hours at:

U.S. District Court, Central District of California  
312 Spring Street  
Los Angeles, CA 90012

**PLEASE DO NOT TELEPHONE THE COURT, THE JUDGE, OR THE CLERK OF THE COURT.**

U.S. District Court, Central District of California  
312 Spring Street  
Los Angeles, CA 90012

**PLEASE DO NOT TELEPHONE THE COURT, THE JUDGE, OR THE CLERK OF THE COURT.**

Dated: \_\_\_\_\_, 2014

By Order of the United States District Court, Central District of California.

## **EXHIBIT E**

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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GARY DAVIS, an individual, on behalf  
of himself, as Private Attorney General,  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

CHASE BANK U.S.A., N.A., a  
Delaware corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No. CV 06-04804 DDP (PJWx)

Assigned to the Hon. Dean D. Pregerson

**[PROPOSED] JUDGMENT**

**[PROPOSED] JUDGMENT**

Case 2:06-cv-04804-DDP-PJW Document 332-1 Filed 04/23/14 Page 68 of 78 Page ID  
#:7300

Judgment is hereby entered pursuant to the terms of the Final Approval  
Order.  
IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
DEAN D. PREGERSON  
United States District Court Judge

**EXHIBIT C**

**Preliminary Approval Order**



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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 GARY DAVIS, an individual, on behalf  
11 of himself, as Private Attorney General,  
12 and on behalf of all others similarly  
situated,

13 Plaintiff,

14 v.

15 CHASE BANK U.S.A., N.A., a  
16 Delaware corporation; and DOES 1  
through 50, inclusive,

17 Defendants.  
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Case No. CV 06-04804 DDP (PJWx)

Assigned to the Hon. Dean D. Pregerson

**PRELIMINARY APPROVAL  
ORDER**

[PROPOSED] PRELIMINARY APPROVAL ORDER

1 WHEREAS, Plaintiffs have made a motion (the "Motion"), pursuant to  
2 Federal Rule of Civil Procedure 23, for an order preliminarily approving settlement  
3 of the above-captioned action (the "Lawsuit") in accordance with the Stipulation and  
4 Agreement of Settlement filed with this Court on April 23, 2014 (the "Agreement" or  
5 the "Settlement"), and the exhibits attached thereto, entered into by and between  
6 Plaintiffs and Chase, setting forth the terms and conditions for a proposed settlement  
7 of the Lawsuit and its dismissal with prejudice; and

8 WHEREAS, Chase does not oppose Plaintiffs' Motion; and

9 WHEREAS, as a condition of the Agreement, Plaintiffs, on behalf of  
10 themselves individually and on behalf of each of the Settlement Class Members,  
11 have agreed to release all claims arising under federal, state or common law as  
12 specified in Sections 6.1 and 6.2 of the Agreement; and

13 WHEREAS, this Court having read and considered Plaintiffs' Motion, the  
14 Agreement and exhibits attached thereto, as well as all arguments and submissions  
15 from the Parties and any intervenors at the noticed hearings; and

16 WHEREAS, all defined terms have the same meaning as set forth in the  
17 Agreement.

18 NOW, THEREFORE, IT IS HEREBY ORDERED:

19 1. For purposes of this Lawsuit, this Court has subject matter jurisdiction  
20 and, for purposes of the Settlement only, this Court has personal jurisdiction over the  
21 Parties, including all Settlement Class Members.

22 2. For purposes of this Settlement only, this Court preliminarily certifies  
23 the following Settlement Class:

24 All Chase Circuit City Rewards Credit Cardmembers with  
25 California billing addresses who, between May 26, 2004  
26 and the entry of this Preliminary Approval Order  
27 (inclusive), made a promotional or deferred-interest  
28 purchase at Circuit City and who, as a result of payments or  
credits being allocated to a regular purchase balance after  
the promotional or deferred-interest balance, paid more in  
finance charges than they would have paid if the payments  
or credits had first been applied to the regular purchase  
balance.

STROOCK & STROOCK & LAVAN LLP  
2029 Century Park East  
Los Angeles, California 90067-3086

1 The Settlement Class preliminarily is certified pursuant to Federal Rule of  
2 Civil Procedure 23(b)(3), and all Settlement Class Members will have the right to  
3 exclude themselves by way of the opt-out procedure set forth below in Paragraph 12.

4 3. This Court preliminarily finds, solely for purposes of the Settlement,  
5 that the Lawsuit may be maintained as a class action on behalf of the Settlement  
6 Class because: (a) the Settlement Class is so numerous that joinder of all Settlement  
7 Class Members in the Lawsuit is impracticable; (b) there are questions of law and  
8 fact common to Settlement Class Members that predominate over any individual  
9 questions; (c) Plaintiffs' claims are typical of the claims of the Settlement Class;  
10 (d) Plaintiffs and Class Counsel have fairly and adequately represented and protected  
11 the interests of the Settlement Class; and (e) a class action is superior to other  
12 available methods for the fair and efficient adjudication of the controversy.

13 4. This Court preliminarily approves the Agreement as being fair,  
14 reasonable and adequate and within the range of possible approval, subject to further  
15 consideration at the Final Fairness Hearing as set forth below in Paragraph 7.

16 5. This Court preliminarily finds that Plaintiffs fairly and adequately  
17 represent the interests of the Settlement Class and therefore designates Plaintiffs as  
18 the representatives of the Settlement Class.

19 6. Pursuant to Federal Rule of Civil Procedure 23(g), and after  
20 consideration of the factors described therein and oral and written arguments, this  
21 Court designates as Class Counsel the law firms of Westerman Law Corp.,  
22 Roxborough, Pomerance, Nye & Adreani, LLP and Milberg LLP. This Court  
23 preliminarily finds that based on the work Class Counsel have done in identifying,  
24 investigating and prosecuting the claims in the action, Class Counsel's experience in  
25 handling class actions, other complex litigation and claims of the type asserted in this  
26 Lawsuit, Class Counsel's knowledge of the applicable law and the resources Class  
27 Counsel have and will commit to representing the class, Class Counsel have and will  
28 fairly and adequately represent the interests of the Settlement Class. Plaintiffs and

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Los Angeles, California 90067-3086

1 Class Counsel, on behalf of the Settlement Class, are authorized to take all  
2 appropriate action required or permitted to be taken by the Settlement Class pursuant  
3 to the Agreement to effectuate its terms.

4 7. The Final Fairness Hearing will take place before the Honorable Dean  
5 D. Pregerson on **October 27, 2014 at 11:00 a.m.**, at the United States District Court,  
6 Central District of California, Courtroom #3, 312 Spring Street, Los Angeles,  
7 California 90012, to determine: whether the proposed Settlement of the Lawsuit on  
8 the terms and conditions provided for in the Agreement is fair, adequate and  
9 reasonable as to the Settlement Class Members and should be approved; whether the  
10 Judgment, as provided for in the Agreement, should be entered; and whether the  
11 amount of fees and costs that should be awarded to Class Counsel, and the amount of  
12 the service awards that should be awarded to Plaintiffs, as provided for in the  
13 Agreement. The Court will also hear and consider any properly lodged objections at  
14 that time.

15 8. This Court approves Gilardi & Co. LLC as the Settlement  
16 Administrator. The Settlement Administrator is directed to implement the notice  
17 program set forth in Sections 7.2 and 7.3 of the Agreement.

18 9. This civil action was commenced after February 18, 2005. To the extent  
19 it has not already done so, the Court directs Chase to notify the appropriate Federal  
20 and State officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715,  
21 and, at or before the Final Fairness Hearing, file proof that such notice has been  
22 given.

23 10. This Court finds that notice as set forth in Sections 7.2 and 7.3 of the  
24 Agreement are the only notice required, and that such notice satisfies the  
25 requirements of due process, the Federal Rules of Civil Procedure, the Class Action  
26 Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable laws, and  
27 constitutes the best notice practicable under the circumstances and will constitute due  
28 and sufficient notice to all persons entitled thereto. This Court approves the form

1 and content of the Postcard Notice and Long-form Notice attached as Exhibits C and  
2 D to the Agreement.

3 11. All Settlement Class Members who do not request exclusion (“opt-out”)  
4 from the Settlement Class certified pursuant to Federal Rule of Civil Procedure  
5 23(b)(3), pursuant to the procedure set forth in Paragraph 12 below, will be bound by  
6 all determinations and judgments in this Lawsuit concerning the Settlement,  
7 including, but not limited to, the validity, binding nature and effectiveness of the  
8 releases set forth in Sections 6.1 and 6.2 of the Agreement.

9 12. Any Settlement Class Member who wishes to opt-out of the Settlement  
10 Class will submit to the Settlement Administrator an appropriate written request for  
11 exclusion by mail, postmarked no later than one hundred and five (105) days after  
12 entry of this Order. The request for exclusion must be personally signed by the  
13 Settlement Class Member, and include: (i) the Settlement Class Member’s name,  
14 address, telephone number; (ii) the last four digits of the Settlement Class Member’s  
15 Chase credit card account number(s); (iii) a sentence certifying that he or she is a  
16 Settlement Class Member; and (iv) the following statement: “I request to be excluded  
17 from the class settlement in Davis v. Chase Bank USA, N.A., United States District  
18 Court, Central District of California, Case No. 2:06-CV-04804-DDP-PJW.” No  
19 Settlement Class Member, or any person acting on behalf of or in concert or  
20 participation with a Settlement Class Member, may exclude any other Settlement  
21 Class Member from the Settlement Class.

22 13. Any Settlement Class Member, who has not previously opted-out in  
23 accordance with the terms of Paragraph 12 above, may appear at the Final Fairness  
24 Hearing to argue that the proposed Settlement should not be approved and/or to  
25 oppose the application of Class Counsel for an award of attorneys’ fees and costs and  
26 the service awards to Plaintiffs; provided, however, that no Settlement Class Member  
27 will be heard, and no objection may be considered, unless the Settlement Class  
28 Member files with this Court a written statement of the objection postmarked no later

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2029 Century Park East  
Los Angeles, California 90067-3086

1 than one hundred and five (105) days following entry of this Order. Copies of all  
2 objection papers also must be served electronically via the Court's ECF system or  
3 mailed, postmarked no later than one hundred and five (105) days following entry of  
4 this Preliminary Approval Order, to each of the following: Class Counsel, Drew  
5 Pomerance, Esq., Roxborough, Pomerance, Nye & Adreani, LLP, 5820 Canoga  
6 Avenue, Woodland Hills CA 91367-6549; and counsel for Chase, Julia B. Strickland,  
7 Esq. and Stephen J. Newman, Esq., Stroock & Stroock & Lavan LLP, 2029 Century  
8 Park East, 16th Floor, Los Angeles, California 90067. All objections must include:  
9 (i) the objector's name, address and telephone number; (ii) the last four digits of the  
10 objector's Circuit City Rewards Credit Card account number(s); (iii) a sentence  
11 certifying he or she is a Settlement Class Member; (iv) the factual basis and legal  
12 grounds for the objection to the Settlement; (v) the identity of witnesses whom the  
13 objector may call to testify at the Final Fairness Hearing; (vi) copies of exhibits the  
14 objector may seek to offer into evidence at the Final Fairness Hearing; (vii) a  
15 sentence certifying that the objector has not been promised anything in return for  
16 objecting; and (viii) the personal signature of the objector.

17 14. Class Counsel will submit their papers in support of final approval of  
18 the Settlement and their application for attorneys' fees and reimbursement of  
19 expenses by no later than twenty (20) days before the objection deadline set by  
20 Paragraph 13 above.

21 15. Class Counsel will submit their papers in response to any objections by  
22 no later than seven (7) days before the Final Fairness Hearing.

23 16. The costs of notice and settlement administration shall be paid as  
24 described in Section 4 of the Agreement.

25 17. All proceedings in this Lawsuit are stayed pending final approval of the  
26 Settlement, except as may be necessary to implement the Settlement or comply with  
27 the terms of the Agreement.  
28

STROOCK & STROOCK & LAVAN LLP  
2029 Century Park East  
Los Angeles, California 90067-3086

1 18. Pending final determination of whether the Settlement should be  
2 approved, Plaintiffs, all Settlement Class Members and any person or entity allegedly  
3 acting on behalf of Settlement Class Members, either directly, representatively or in  
4 any other capacity, are preliminarily enjoined from commencing or prosecuting  
5 against the Released Parties any action or proceeding in any court or tribunal  
6 asserting any of the Released Claims, provided, however, that this injunction will not  
7 apply to individual claims of any Settlement Class Members who timely exclude  
8 themselves in a manner that complies with Paragraph 12 above. This injunction is  
9 necessary to protect and effectuate the Settlement, this Order, and this Court's  
10 flexibility and authority to effectuate this Settlement and to enter judgment when  
11 appropriate, and is ordered in aid of this Court's jurisdiction and to protect its  
12 judgments pursuant to 28 U.S.C. section 1651(a).

13 19. This Court reserves the right to adjourn or continue the date of the Final  
14 Fairness Hearing without further notice to Settlement Class Members, and retains  
15 jurisdiction to consider all further applications arising out of or connected with the  
16 Settlement. This Court may approve or modify the Settlement without further notice  
17 to Settlement Class Members.

18 IT IS SO ORDERED.

19 Dated: June 05, 2014



DEAN D. PREGERSON  
United States District Judge

**EXHIBIT D**

**Final Judgment**



JS-6

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GARY DAVIS, an individual; on  
behalf of himself, and as PRIVATE  
ATTORNEY GENERAL, and on  
behalf of all others similarly situated,

Plaintiff,

v.

CHASE BANK U.S.A., N.A., a  
Delaware corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No. CV 06-04804 DDP (PJWx)

Honorable Dean D. Pregerson

**JUDGMENT**

**Date:** October 27, 2014

**Time:** 11:00 a.m.

**Courtroom:** 3

Judgment is hereby entered pursuant to the terms of the Final Approval  
Order.

IT IS SO ORDERED.

Dated: October 29, 2014



DEAN D. PREGERSON  
United States District Judge

**EXHIBIT E**

**Amended Final Approval Order**

NO JS-6

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GARY DAVIS, an individual; on  
behalf of himself, and as PRIVATE  
ATTORNEY GENERAL, and on  
behalf of all others similarly situated,

Plaintiff,

v.

CHASE BANK U.S.A., N.A., a  
Delaware corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No. CV 06-04804 DDP (PJWx)

Honorable Dean D. Pregerson

**AMENDED FINAL APPROVAL  
ORDER**

**Date:** October 27, 2014

**Time:** 11:00 a.m.

**Courtroom:** 3

1 Plaintiff Gene Castillo ("Plaintiff"), on his own behalf and on behalf of all  
2 others similarly situated, submitted to the District Court a Motion for Final  
3 Approval of Settlement ("Motion") seeking final approval of the Stipulation and  
4 Agreement of Settlement (the "Agreement" or the "Settlement"), and the exhibits  
5 attached thereto, entered into by and between Plaintiff and Defendant Chase Bank  
6 U.S.A., N.A. ("Chase"). Chase does not oppose Plaintiff's Motion.

7 By Order dated June 5, 2014, the District Court entered an Order that  
8 preliminarily approved the Agreement and conditionally certified the Settlement  
9 Class for settlement purposes only (the "Preliminary Approval Order"). Due and  
10 adequate notice having been given to the Settlement Class in compliance with the  
11 procedures set forth in the Agreement and the Preliminary Approval Order, this  
12 Court having considered all papers filed and proceedings had herein, and  
13 otherwise being fully informed of the premises and good cause appearing  
14 therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

15 1. This Final Approval Order incorporates by reference the definitions  
16 in the Agreement, and all terms used herein will have the same meanings as set  
17 forth in the Agreement.

18 2. This Court has jurisdiction over the subject matter of the above-  
19 captioned action (the "Lawsuit") and, for purposes of this Settlement only,  
20 personal jurisdiction over the Parties and all Settlement Class Members.

21 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and  
22 consistent with due process, this Court hereby approves the Agreement and finds  
23 that the settlement consideration is fair and that said Settlement is, in all respects,  
24 fair, reasonable and adequate to the Settlement Class Members, and the Parties are  
25 hereby directed to consummate the Settlement in accordance with the terms and  
26 provisions of the Agreement.

27 4. Pursuant to Federal Rule of Civil Procedure 23(b)(3), this Court  
28 hereby certifies the Settlement Class solely for purposes of effectuating this

1 Settlement.

2 a. The Settlement Class is defined as follows:

3 All Chase Circuit City Rewards Credit Cardmembers with  
4 California billing addresses who, between May 26, 2004 and  
5 June 5, 2014 (inclusive), made a promotional or deferred-  
6 interest purchase at Circuit City and who, as a result of  
7 payments or credits being allocated to a regular purchase  
8 balance after the promotional or deferred-interest balance, paid  
9 more in finance charges than they would have paid if the  
10 payments or credits had first been applied to the regular  
11 purchase balance.

12 b. Settlement Class Members had the right to exclude themselves  
13 by way of the opt-out procedure set forth in the Preliminary Approval Order.  
14 Excluded from the Settlement Class are 22 persons who validly and timely  
15 requested exclusion from the Settlement Class by way of the opt-out procedure,  
16 and 2 persons who submitted an untimely request for exclusion, but for whom  
17 Chase is waiving its objection. These 24 individuals are identified in Exhibit 1  
18 hereto (the "Opt-Outs").

19 5. For purposes of this Settlement only, this Court finds and concludes  
20 that: (a) the Settlement Class Members are so numerous that joinder of all  
21 Settlement Class Members is impracticable; (b) there are questions of law and fact  
22 common to the Settlement Class which predominate over any individual  
23 questions; (c) Plaintiff's claims are typical of the claims of the Settlement Class;  
24 (d) Plaintiff and Class Counsel have fairly and adequately represented and  
25 protected the interests of all of the Settlement Class Members; and (e) a class  
26 action is superior to other available methods for the fair and efficient adjudication  
27 of the controversy, considering: (i) the interests of the Settlement Class Members  
28 in individually controlling the prosecution of separate actions; (ii) the desirability

1 or undesirability of continuing the litigation of these claims in this particular  
2 forum; and (iii) the difficulties likely to be encountered in the management of this  
3 class action.

4 6. This Court finds that the notice provided to Settlement Class  
5 Members was the best notice practicable and fully satisfied the requirements of  
6 due process, the Federal Rules of Civil Procedure, the Class Action Fairness Act  
7 of 2005, 28 U.S.C. § 1715, and any other applicable laws, and constituted the best  
8 notice practicable under the circumstances and constituted due and sufficient  
9 notice to all persons entitled thereto. Class Counsel has filed with the Court proof  
10 that notice was provided to Settlement Class Members in compliance with the  
11 procedures set forth in the Agreement and the Preliminary Approval Order.  
12 Chase's counsel has filed with the Court proof of compliance with the Class  
13 Action Fairness Act of 2005.

14 7. There were no objections to the Settlement.

15 8. This Court hereby dismisses with prejudice on the merits and without  
16 costs (except as otherwise provided in the Agreement) the above-captioned action  
17 (subject to retention of jurisdiction to enforce the Settlement).

18 9. By operation of this Final Approval Order and upon the occurrence  
19 of the Effective Date, Plaintiff and each Settlement Class Member, their  
20 respective heirs, executors, administrators, representatives, agents, attorneys,  
21 partners, successors, predecessors-in-interest, assigns and all persons acting for or  
22 on their behalf, are deemed to have fully, finally and forever released the Released  
23 Parties (as defined below) from all Claims (as defined below).

24 a. "Released Parties" means Chase, together with its  
25 predecessors, successors (including, without limitation, acquirers of all or  
26 substantially all of its assets, stock or other ownership interests) and assigns; the  
27 past, present, and future, direct and indirect, parents (including but not limited to  
28 holding companies and JPMorgan Chase & Co.), subsidiaries and affiliates of any

1 of the above; and the past, present and future principals, trustees, partners, claims  
2 administrators (including, without limitation, the Settlement Administrator),  
3 officers, directors, employees, agents, attorneys, shareholders, advisors,  
4 predecessors, successors, assigns, representatives, heirs, executors, and  
5 administrators of any of the above.

6           b.     “Claim” and “Claims” mean any and all actual or potential  
7 claims, actions, causes of action, suits, counterclaims, cross-claims, third party  
8 claims, contentions, allegations, and assertions of wrongdoing, and any demands  
9 for any and all debts, obligations, liabilities, damages (whether actual,  
10 compensatory, treble, punitive, exemplary, statutory or otherwise), attorneys’ fees,  
11 costs, expenses, restitution, disgorgement, injunctive relief, any other type of  
12 equitable, legal or statutory relief, any other benefits, or any penalties of any type  
13 whatsoever, whether known or unknown, suspected or unsuspected, contingent or  
14 non-contingent, or discovered or undiscovered, whether asserted in federal court,  
15 state court, arbitration or otherwise, and whether triable before a judge or jury or  
16 otherwise, including, without limitation, those that were alleged, or that could  
17 have been alleged based on the same or similar facts and circumstances, in the  
18 Lawsuit.

19           c.     Without limiting the foregoing, the claims released pursuant to  
20 Paragraph 9b (the “Released Claims”) specifically extend to Claims that  
21 Settlement Class Members do not know or suspect to exist in their favor as of or  
22 prior to the Effective Date.

23           10.    The Parties, and all Settlement Class Members, agree that the  
24 releases in Paragraph 9 constitute a waiver of Section 1542 of the California Civil  
25 Code and any similar or comparable provisions, rights and benefits conferred by  
26 the law of any state or territory of the United States or any jurisdiction, and any  
27 principle of common law. Section 1542 of the California Civil Code provides:  
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
2 WHICH THE CREDITOR DOES NOT KNOW OR  
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE  
4 TIME OF EXECUTING THE RELEASE, WHICH IF  
5 KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
6 AFFECTED HIS OR HER SETTLEMENT WITH THE  
7 DEBTOR.

8 Plaintiff and each Settlement Class Member understand and acknowledge  
9 the significance of these waivers of California Civil Code Section 1542 and/or of  
10 any other applicable law relating to limitations on releases. In connection with  
11 such waivers and relinquishment, Plaintiff and each Settlement Class Member  
12 acknowledge that they are aware that they may hereafter discover facts in addition  
13 to, or different from, those facts which they now know or believe to be true with  
14 respect to the subject matter of the Settlement, but that they release fully, finally  
15 and forever all Claims, and in furtherance of such intention, the releases will  
16 remain in effect notwithstanding the discovery or existence of any such additional  
17 or different facts. The Parties acknowledge (and all Settlement Class Members by  
18 operation of law are deemed to have acknowledged) that the release of unknown  
19 Claims as set forth herein was separately bargained for and was a key element of  
20 the Settlement.

21 11. This Final Approval Order, the Preliminary Approval Order, the  
22 Agreement, and any act performed or document executed pursuant to or in  
23 furtherance thereof:

24 a. Will not be offered or received against the Released Parties as  
25 evidence of, or be construed as or deemed to be evidence of, any admission or  
26 concession by the Released Parties as to the truth or relevance of any fact alleged  
27 by Plaintiff, the existence of any class alleged by Plaintiff, the propriety of class  
28



1 certification had the Lawsuit been litigated rather than settled, or the validity of  
2 any claim that has been or could have been asserted in the Amended Complaint or  
3 in any other litigation, or the deficiency of any defense that has been or could have  
4 been asserted to the Amended Complaint or in any other litigation, or of any  
5 liability, negligence, fault, or wrongdoing of the Released Parties;

6           b. Will not be offered as or received against any of the Released  
7 Parties as evidence of, or construed as or deemed to be evidence of, any admission  
8 or concession of any liability, negligence, fault or wrongdoing, or in any way  
9 referred to for any other reason as against any of the parties to the Agreement, in  
10 any other civil, criminal or administrative action or proceeding, other than such  
11 proceedings as may be necessary to effectuate the provisions of the Agreement,  
12 except that the Released Parties may refer to it to effectuate the liability protection  
13 granted them thereunder;

14           c. Will not be deemed an admission by Chase that it is subject to  
15 the jurisdiction of any court;

16           d. Will not be construed against Chase as an admission or  
17 concession that the consideration to be given under the Agreement represents the  
18 amount which could be or would have been recovered after trial.

19       12. The Released Parties may file the Agreement and/or this Final  
20 Approval Order in any action that may be brought against them in order to support  
21 a defense or counterclaim based on principles of res judicata, collateral estoppel,  
22 release, good faith settlement, judgment bar, reduction, set-off or any other theory  
23 of claim preclusion or issue preclusion or similar defense or counterclaim.

24       13. Settlement Class Members, and any person or entity allegedly acting  
25 on behalf of Settlement Class Members, either directly, representatively or in any  
26 other capacity, are enjoined from commencing or prosecuting against the Released  
27 Parties any action or proceeding in any court or tribunal asserting any of the  
28 Released Claims, provided, however, that this injunction will not apply to non-

1 released claims of Opt-Outs.

2 14. The Court finds that the Parties and their counsel have complied with  
3 each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all  
4 proceedings herein.

5 15. Class Counsel are hereby awarded the sum of \$1,500,000 in  
6 attorneys' fees and costs, which sum the Court finds to be fair and reasonable,  
7 which will be paid to Class Counsel from the Settlement Fund. The award of  
8 attorneys' fees and costs will be allocated among Class Counsel in a fashion  
9 which, in the opinion of Class Counsel, fairly compensates Class Counsel for their  
10 respective contributions in the prosecution of the Lawsuit.

11 16. Plaintiff Gene Castillo and Gary Davis are hereby awarded \$5,000  
12 each from the Settlement Fund. These service awards are for their time and  
13 efforts spent conferring with and assisting Class Counsel to help further the  
14 Lawsuit for the benefit of the Settlement Class.

15 17. In making the award of attorneys' fees and costs to Class Counsel  
16 and service awards to Plaintiff Gene Castillo and Gary Davis, the Court has  
17 considered and found that:

18 a. The Parties entered into arm's-length discussions regarding  
19 attorneys' fees for Class Counsel, including extensive discussions through and  
20 with the assistance of a third-party mediator, Hon. Edward A. Infante (Ret.);

21 b. The Settlement created a benefit with a substantial value to the  
22 Settlement Class and numerous Settlement Class Members.

23 c. 438,969 copies of the Postcard Notice were disseminated to  
24 putative Settlement Class Members. No objections were filed against the terms of  
25 the proposed Settlement;

26 d. Class Counsel conducted the Lawsuit and achieved the  
27 Settlement with skill, perseverance and diligent advocacy;

28 e. The Lawsuit involves complex factual and legal issues and was

1 actively prosecuted over seven years and, in the absence of a settlement, would  
2 involve further lengthy proceedings with uncertain resolution of the complex  
3 factual and legal issues;

4 f. Had Class Counsel not achieved the Settlement there would  
5 remain a significant risk that the Settlement Class may have recovered less or  
6 nothing from the defendant;

7 g. The separate declarations submitted by each of the three firms  
8 prosecuting this case on behalf of the Class state that, to achieve the Settlement,  
9 Roxborough, Pomerance, Nye & Adreani, LLP devoted over 3,152 hours, with a  
10 lodestar value of over \$1,440,200.00, Westerman Law Corp. devoted over 33  
11 hours, with a lodestar value of over \$26,000, and Milberg LLP devoted over 2,741  
12 hours with a lodestar value of over \$1,435,076.00.

13 h. The amount of attorneys' fees and costs awarded and the  
14 amount of the service awards are fair and reasonable and consistent with awards  
15 in similar cases.

16 18. Without affecting the finality of this Final Approval Order in any  
17 way, this Court retains continuing jurisdiction of all matters relating to the  
18 modification, interpretation, administration, implementation, effectuation and  
19 enforcement of the Settlement. Class Counsel are to continue in their role to  
20 oversee all aspects of the Settlement. Upon notice to Class Counsel, Chase may  
21 seek from this Court, pursuant to 28 U.S.C. § 1651(a), such further orders or  
22 process as may be necessary to prevent or forestall the assertion of any of the  
23 Released Claims in any other forum, or as may be necessary to protect and  
24 effectuate the Settlement and this Final Approval Order.

25 19. If an appeal, writ proceeding or other challenge is filed as to this  
26 Final Approval Order, and if thereafter the Final Approval Order is not ultimately  
27 upheld, all orders entered, stipulations made and releases delivered in connection  
28

1 herewith, or in the Agreement or in connection therewith, will be null and void to  
2 the extent provided by and in accordance with the Agreement.

3 20. There is no just reason for delay in the entry of this Final Approval  
4 Order and immediate entry by the Clerk of the Court is expressly directed  
5 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

6  
7 IT IS SO ORDERED.

8  
9 Dated: October 29, 2014



DEAN D. PREGERSON  
United States District Judge

# **EXHIBIT 1**

**OPT-OUT LIST**

1. Vicky Williams
2. Juanito D. Doce
3. Richard T. Rodarte
4. Clarice Mirzakhanian
5. Genee B. Aleksandrovi
6. Amy L. Norris
7. Pedro Gomez
8. Veronica E. Siy
9. Gordon Tam
10. Thomas Condos, Jr.
11. Robin B. Hansen
12. Sandra Pimentel
13. Thirin Has
14. Lida Salas
15. Edward Sanches
16. Scott A. Bidnick
17. Charla Pinney
18. Charles J. Yi
19. Wayne E. White
20. Geraldin D. Denser
21. Elaine Hanley
22. Joseph Meza
23. Noe Flores
24. Anthony Lewis

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 23, 2014, a true and correct copy of the foregoing AMENDED [PROPOSED] FINAL APPROVAL ORDER was filed electronically and served by U.S. Mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by facsimile to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

s/ Elia Ramirez  
Elia Ramirez

**EXHIBIT F**

**Service and Expense Remittance Summary**



## STROOCK

### SERVICE AND EXPENSE REMITTANCE SUMMARY

DATE	November 7, 2014
CLIENT	JPMorgan Chase Bank
	560 Mission Street
	3rd Floor
	Mail Code: CA1-0301
	San Francisco, CA 94105-2907
RE	720524 JPMorgan Chase Bank
	0940 Davis, Gary J.

PREVIOUS PAYMENTS RECEIVED FOR FEES BILLED THROUGH SEPTEMBER 31, 2014	\$1,610,450.37
PREVIOUS PAYMENTS RECEIVED FOR EXPENSES BILLED THROUGH SEPTEMBER 31, 2014	\$36,627.46
UNBILLED FEES OCTOBER 1 - 31, 2014	\$5,093.00
UNBILLED EXPENSES OCTOBER 1 - 31, 2014	\$61.46
<b>TOTAL</b>	<b>\$1,652,232.29</b>

WIRE TRANSFER INSTRUCTIONS	
BANK NAME	JPMorgan Chase Bank
BANK ADDRESS	500 Stanton Christiana Road, Newark, DE 19713
ACCOUNT NAME	Stroock & Stroock & Lavan LLP
ACCOUNT NUMBER	006 028356
ABA/ROUTING NUMBER	021000021
INTERNATIONAL SWIFT CODE	CHASUS33
DESCRIPTION/REFERENCE	Client/Matter: 720524.0940

Any disbursement balances shown are compiled from original sources as entered on our records to the billing date shown. Any disbursements/charges invoiced to us or posted by us subsequent to that date will be reflected in future billing.

**EXHIBIT B**  
**(Order)**

Andrew W. Caine, Esq.  
(admitted *pro hac vice*)  
Jeremy V. Richards, Esq.  
(admitted *pro hac vice*)  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Boulevard, 13<sup>th</sup> Floor  
Los Angeles, California 90067-4100  
Telephone: (310) 277-6910  
Telecopy: (310) 201-0760

Lynn L. Tavenner, Esq. (VA Bar No. 30083)  
Paula S. Beran, Esq. (VA Bar No. 34679)  
TAVENNER & BERAN, PLC  
20 North Eighth Street, 2<sup>nd</sup> Floor  
Richmond, Virginia 23219  
Telephone: (804) 783-8300  
Telecopy: (804) 783-0178

*Counsel to the Circuit City Stores, Inc. Liquidating Trust*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

---

In re:

x

CIRCUIT CITY STORES, INC., et al.,

Case No. 08-35653-KRH  
Chapter 11

Debtors.

[NO HEARING REQUESTED]

---

x

**ORDER GRANTING STIPULATION BY AND BETWEEN CIRCUIT CITY STORES,  
INC. LIQUIDATING TRUST AND CHASE BANK USA, N.A. PERMITTING THE  
FILING OF AN AMENDMENT TO PROOF OF CLAIM NUMBER 7065**

Upon reviewing that certain Stipulation By and Between Circuit City Stores, Inc. Liquidating Trust and Chase Bank USA, N.A. Permitting the Filing of an Amendment to Proof of Claim Number 7065 (the "Stipulation"), and good cause appearing therefor, all capitalized terms not otherwise defined herein having the same meaning as set forth in the Stipulation or the Claims Order (as that term is defined in the Stipulation), it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Stipulation is granted.
2. Chase Bank is hereby authorized to file the Amended Claim as an amendment to the Original Claim (Claim No. 7065).

3. All of the Trust's rights, remedies and defenses with respect to the Amended Claim (including, without limitation, those set forth in the Stipulation) are expressly reserved.

4. In the event that Chase Bank is required to provide additional documentation in support of either the Original Claim or the Amended Claim, Chase Bank is authorized to provide such additional documentation or information without the need to further amend its claim or obtain approval from the Court.

Dated: Richmond, Virginia  
November \_\_\_\_, 2014

---

**Honorable Kevin R. Huennekens**  
**United States Bankruptcy Judge**

**WE ASK FOR THIS:**

Lynn L. Tavenner (VA Bar No. 30083)  
Paula S. Beran (VA Bar No. 34679)  
TAVENNER & BERAN PLC  
20 North Eighth Street, 2<sup>nd</sup> Floor  
Richmond, Virginia 23219  
Telephone: 804-783-8300  
Facsimile: 804-783-0178

-and-

Andrew W. Caine (CA Bar No. 11345)  
(admitted *pro hac vice*)  
Jeremy V. Richards, Esq. (CA Bar No. 102300)  
(admitted *pro hac vice*)  
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*Counsel for the Circuit City, Inc. Liquidating Trust*

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Los Angeles, CA 90067-3086  
Telephone: 310-556-5800  
Facsimile: 310-556-5959

-and-

Michael A. Condyles (Va. Bar. No. 27807)  
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1111 East Main Street, 8th Floor  
Richmond, Virginia 23219  
Telephone: (804) 343-5227  
Facsimile: (804) 783-6192

*Attorneys for Chase Bank USA, N.A.*